



United States Government Printing Office
Washington, D.C. 20401

STATEMENT OF
RALPH E. KENNICKELL, JR.
PUBLIC PRINTER OF THE UNITED STATES
BEFORE THE
SUBCOMMITTEE ON LEGISLATION AND NATIONAL SECURITY
COMMITTEE ON GOVERNMENT OPERATIONS
HOUSE OF REPRESENTATIVES
SEPTEMBER 25, 1986

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available. All of GPO was made completely open to the GAO team.

When I last appeared before the subcommittee, on April 10, I described the process and competition leading up to the award of the 600-S contract in January of this year, and the litigation then surrounding that award. As you are aware, on June 19, 1986, we reopened negotiations on 600-S and terminated the existing contract with EDS. Let me now briefly summarize the history of this procurement and its current status.

Following the successful award and implementation of Program 400-S, which provided a state-of-the-art printing service for all of the Army's administrative manuals, we received a request from the Army to provide a similar, yet more developed, service for all of its technical and training manuals. This program, 600-S, was announced in the Commerce Business Daily on October 16, 1984, and the Request for Proposals was issued on December 4, 1984. After two preliminary rounds of proposals, best and final offers were submitted by four companies in December 1985. Final evaluation of the offers, both as to technical merit and price, was made by GPO and the Army, and award was made to the successful offeror, Electronic Data Systems, on January 9, 1986. All three of the unsuccessful offerors protested the award. One of the companies lodged the first protest with GAO, the other two sought review by the General

Services Administration Board of Contract Appeals, the "GSBCA."

As the subcommittee may recall from my earlier testimony, we then became embroiled in extensive litigation concerning the proper reviewing authority, essentially whether it should be GAO or GSBCA.

At this point, Mr. Chairman, I think it is important that the subcommittee understand that there were two, separate and independent concerns that arose as a result of these protests. First, naturally, was my concern with regard to the merits of the protests, whether--after over a year's effort in the solicitation and negotiations--the 600-S procurement was sound, or whether it was faulty. Second, and at least as important, was my concern over the assertion by GSBCA of protest jurisdiction over a contract awarded solely under my responsibility, as Public Printer, to provide for the printing needs of the Federal Government.

My strong belief that GSBCA was wrongly asserting its jurisdiction over my contracts required that we obtain immediate resolution of the issue, so we brought the matter as quickly as possible to the U.S. Court of Appeals for the Federal Circuit--the supervisory court over the GSBCA--for its definitive ruling. The court on May 28, 1986, issued its opinion. It agreed with our view that the GSBCA lacked authority, and ordered the GSBCA to dismiss the protests, which it has done. (The opinion, which fully sets forth the

court's rationale, is reported as Electronic Data Systems Federal Corp. v. General Services Administration Board of Contract Appeals, 792 F.2d 1569.)

While this jurisdictional issue was being vigorously litigated, both my Inspector General and the GAO investigation team were reviewing documents and interviewing personnel from GPO and the Army. As I noted in a February 3, 1986, letter to the Chairman and Mr. Horton, I had in late 1985 asked the Inspector General to conduct a review of the procurement procedures utilized in 600-S and to provide me with a report of her findings, including any recommendations she might have with respect to possible improvements.

On June 4, 1986, the Inspector General provided me with an oral report on her findings as of that date. This was followed by a written, interim report on June 11. These reports provided all of the facts pertaining to the manner in which GPO's contract negotiation team accepted EDS's correction of an obvious error in its final offer prices. Based on what her investigation revealed, the Inspector General questioned the allowance of that correction by the contracting officer without reopening negotiations with the other offerors. In her reports, she also noted that issues had been raised about the Army's conduct of the benchmark tests and the technical evaluations, but at that interim

point she did not reach any conclusions with regard to those issues.

With respect to the correction of the price error, the Inspector General summarized the pertinent facts as follows:

The offerors submitted their Best and Final Offer cost proposals on December 16, 1985. During the analysis of the cost proposals, GPO calculated EDS's total offer for Section IV of their bid to be \$ XX,XXX,XXX.XX using unit prices provided by EDS. Using this figure would have placed EDS third in price. EDS's price summary, however, showed a total cost of \$ Y,YYY,YYY.YY for Section IV or a difference of about \$25 million. The GPO Contracting Officer determined that EDS made a correctable clerical error in the bid and arrived at \$ Z,ZZZ,ZZZ.ZZ as the final EDS bid. Making the correction in EDS's bid changed EDS's price ranking from number three to number one. [Actual prices omitted.]

Based upon a review of these reports, and upon the information developed by participating in the interviews conducted by the Inspector General and the GAO, GPO's General Counsel concluded (and Army counsel concurred), that whether or not any procurement error may have occurred during the benchmarks and technical evaluations conducted by the Army, the corrections to the prices offered by EDS should not have been allowed by GPO without reopening negotiations.

After reviewing the General Counsel's opinion, the contracting officer determined that in order to correct this error in the procurement process, the existing contract with EDS should be terminated and negotiations reopened. This was effected on June 19, 1986, after consultation with the

Army. (Enclosed with my prepared statement is a copy of the letter I sent to Senator Charles McC. Mathias, Jr., Chairman, Joint Committee on Printing, advising of this action.) All of the offerors who had submitted best and final offers were notified that negotiations were reopened and that an amendment to the solicitation would be forthcoming to provide details. It was planned that before any new contract was awarded, we would adequately take into account the findings and recommendations of the GAO resulting from its investigation. At the request of the Chairman of the Joint Committee on Printing, no amendment has yet been issued, pending the conclusion of this hearing.

At present, we are fully prepared to continue with the procurement, giving due regard to the findings and conclusions of the General Accounting Office, and hope to be able to soon proceed.

Mr. Chairman, that concludes my prepared testimony. If you have any questions, I will try my best to respond.



United States Government Printing Office
Washington, D.C. 20401

OFFICE OF THE PUBLIC PRINTER

June 19, 1986
(84)

Honorable Charles McC. Mathias, Jr.
Chairman, Joint Committee on Printing
Room SH-818, Hart Office Building
Washington, D.C. 20510

Dear Mr. Chairman:

The 600-S program for the Army Integrated Publishing Service is the most significant printing services contract that the Government Printing Office has ever undertaken. The procurement of 600-S required a great deal of effort on the part of both GPO and the Army before award was made to Electronic Data Systems this past January.

In procuring this service, our principal objective has always been to provide the Department of the Army with the best product, at the lowest cost, and in the most timely manner possible. We have sought throughout this procurement to achieve a sound contract while obtaining the most full and open competition practicable. I have on a number of occasions stated that if it were ever demonstrated that there were flaws in the procurement affecting the basic fairness of the competition, we would not hesitate to take appropriate action to make the necessary corrections.

In your recent letter to me of June 2, 1986, you noted that various reviews were being conducted with respect to the 600-S program. One of these reviews is being made, at my direction, by the GPO Inspector General. In the course of her review to date, the Inspector General has conducted extensive interviews of the principal GPO people assigned to the contract negotiating team and support personnel, as well as the various Army personnel who participated in the procurement. In addition, the Inspector General has coordinated her review with that of the General Accounting Office (GAO) by participating in the GAO interviews of GPO personnel. At each of these interviews conducted by either the Inspector General or the GAO, a representative of the General Counsel's office has also been present. As a

Honorable Charles McC. Mathias, Jr.
June 19, 1986

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result, the General Counsel's office has been kept informed of the facts as developed in these interviews, and has had the opportunity to review and analyze the legal aspects of the procurement process.

We have now determined that a serious technical error occurred in the procurement process leading up to the 600-S award. The contracting officer has therefore concluded that the public interest would best be served by terminating the existing contract and reopening negotiations. I concur in his judgment. I expect the termination order to be delivered to Electronic Data Systems today.

Before taking this step, we have conferred at length with responsible officials from the Department of Army, representing both the Army Publishing Directorate and the Judge Advocate General. We have their full concurrence and support. Indeed, they have encouraged us to take these indicated actions.

Shortly, negotiations will be reopened with the issuance of an amendment to the original request for proposals to the vendors who submitted Best and Final Offers.

In the interim, the printing needs of the Department of Army will be satisfied by use of GPO term contracts which are still in place, general usage contracts, and one-time bid procedures. If needed, we will establish new program contracts for the short term. We do not anticipate any difficulty in meeting the Army's quality and timeliness requirements.

If you desire, my staff and I would be pleased to provide you with a full, detailed briefing on these actions.

Sincerely,


RALPH E. KENNICKELL, JR.
Public Printer

cc: Honorable Frank Annunzio
Vice Chairman
Joint Committee on Printing

acquisition proposal at the time his company reached its agreement with Sorbus. However, he said he has since been assured by Sorbus that the maintenance company

that Sorbus and Greyhound will exchange customer information.

"If I were running Bell Atlantic, that's the way I would

they anticipate that it will be a somewhat more aggressive competition leasing arena if it is acquired by Bell Atlantic, but the RBOC's financial position and its interest in

Army Starts Own Probe Into EDS Contract

By DAN TRIGOBOFF

WASHINGTON—In yet another development, the Army has launched its own investigation into the award of a \$300 million contract for computerized printing to Electronic Data Systems Corp., amid charges by Congress that EDS had received illegal favorable treatment.

Army undersecretary James Ambrose told congressmen that he had not appreciated the seriousness of the allegations before the General Accounting Office investigation, which caused him to launch his own.

Ambrose made his remarks at a Government Operations Committee hearing where the GAO reported that an Army officer had boosted the EDS test scores for the 600-S contract with the Government Printing Office (GPO) and that, in a secret meeting, EDS was allowed to lower its price by \$25 million.

The price change, originally attributed to "clerical error" and "decimal-point error" allowed EDS to move from third to first in the rankings for the award.

"Serious . . . Error" Admitted

The GPO terminated the contract in June and began a new procurement, admitting "a serious technical error" but providing no other details (see June 30 MIS Week, page 4).

The official Army statement, dated Sept. 26, said, "As a result of information and testimony given during the House subcommittee for legislation and national security of the Committee on Government Operations hearing conducted Sept. 25, 1986, the

Undersecretary of the Army James R. Ambrose has directed that an investigation by appropriate agencies be conducted to determine the facts of allegations raised during the hearing. The Army treats very seriously any allegations concerning potential fraud, waste or abuse or personal misconduct and will investigate accordingly in this case."

Rep Jack Brooks, D-Tex., agreed to postpone his own investigation while the Army proceeds, but Capitol Hill sources said Brooks was not likely to "give them too much time before Brooks gets back into it."

The outspoken Brooks has attacked the GPO printing contract frequently, and recently lambasted both Ambrose and GPO chief Ralph Kennickell for their slowness in realizing the problems with the contract.

Ambrose admitted before the Government Operations Committee that he had only recently been made aware of the seriousness of the allegations and Kennickell has steadfastly defended the contract since its award.

The 600-S contract has been the subject of controversy since it was awarded to EDS in January. The unsuccessful bidders, AT&T Information Systems, Volt Information Systems and Xerox Corp., made allegations similar to the GAO's findings in protesting the award before the General Service Administration's Board of Contract Appeals (BCA).

But the question of impropriety in the procurement nearly became lost in a maze of administrative and legal actions in federal courtrooms and agencies which first had to determine

where among them lay jurisdiction over the matter (see Jan. 27 MIS Week, page 8).

The GSA claimed authority over the matter because of the Brooks Act—named for its author, Jack Brooks—which gives GSA jurisdiction over automated data processing (ADP) procurements. This raised the added charge that the GPO improperly circumvented GSA in the printing procurement.

But GPO insisted that the contract was not for ADP, but for printing services, which happened to involve computerized equipment, and was therefore not directly within the target range of the Brooks Act.

The Office of Management and Budget (OMB) supported the GPO's contention and a federal court dismissed the losing bidders' claims made before the BCA, contending that the appeals board lacked jurisdiction. Those protests remain in the federal courts.

While the GAO insists that the procurement was within the purview of the Brooks Act, that issue seemed less significant beside the charges that the procurement was rigged in favor of EDS.

Specific Charges

Specifically, GAO found that:

- EDS was allowed, during face-to-face meetings with GPO officials, to lower its bid by \$25 million, after final offers were supposed to have been submitted. Initially, the change in numbers was attributed to a "clerical error," but GAO found no documentation supporting this;

- Testing irregularities favored EDS, including lowered benchmark standards and altered scores;

- Government employees attended parties with EDS and other bidders, following benchmark testing, and

- An Army employee, Anthony Cuneo, solicited employment from EDS's parent company, General Motors, while still a member of the 600-S technical evaluation team. EDS offered Cuneo a job, GAO said, but withdrew the offer when Cuneo disqualified himself from the 600-S project, purportedly because of complaints raised by 600-S competitors. Cuneo returned to a different job with the Army.

At the center of the testing allegations is Army Maj. Stephen Baber, administrator for the tests. Witnesses have told congressional investigators that Baber made "every effort" to sway the procurement toward EDS. GAO believes Baber lowered the benchmarks and weighted the results in EDS's favor "without any reasonable basis," but has not found a motive for the actions.

"The Army will have about a month or so to found out why he (Baber) did it," said a Capitol Hill source. "If they don't, Brooks will get back into it."

If Brooks continues his probe, he will likely subpoena several Army and GPO officials, as well as EDS marketing and legal staff, congressional insiders said.

Besides Congress and the Army, the GPO's Inspector General is also investigating the contract award.

Memory Dou On Burroughs

DETROIT—Burroughs announced last week that it doubled the internal memory base-priced models of entry-level computers maintaining current price

Internal memory for packaged systems of the 3 E and A 3 F has been increased from 3 Mbytes to 6 Mbytes

Upgrade processor kit for the 3 E and A 3 F models to up to 24 Mbytes of internal memory, in increments of 3 Mbytes. The A 3 K memory is expected to 48 Mbytes of memory grades can be done on tomorrow site.

A typical configuration 3 D, with 6 Mbytes of internal user interface processor, printer controls, 123-Mbytes in disk drive and one color display terminal, now \$95,500. The previous price was \$113,000.

DEC, CAD App Marketing Act

MERRIMACK, N.H.—Equipment Corp. here and Computer Aided Decisions International, will work together to form the investment management industry under a signed cooperative marketing agreement.

The pact establishes a cooperative mode of operation actively promotes the sale of CAD's five investment management software modules and DEC's VAX hardware.

CAD's software includes Expanded Portfolio Management System,

By Arnold S. Levine
GCN Staff

The world's most powerful supercomputer facility, the Numerical Aerodynamic Simulation (NAS) system, is on-line at NASA's Ames Research Center, Mountain View, Calif.

Work on the system began at Ames in the mid-1970s. In September 1985 the Cray-2 supercomputer was installed as the main computational engine. It is unique in having a 256-million-word memory — the largest yet available — and it can perform 250 million computations a second. The system went on-line July 21.

While most computer centers are built around one manufacturer's machine, NAS is being set up to accept the newest and fastest computers from any company as they become available. The software and operating system for the network will be able to accommodate any manufacturer's product with minimal disruption.

High-speed processing will be the heart of the system. When the see NASA page 36



At GAO, staff members study programs developed using a compiler for dBase III and dBase III Plus. See story page 69.

Photo by John S. Worley

The General Services Administration wants to pull six delegations of procurement authority away from agencies that had anticipated acquiring their own Washington-area telecommunications switches.

GSA officials said they were planning to retract the DPAs unless the six agencies could come up with viable alternatives to GSA's proposed Washington Interagency Telecommunications System (WITS).

Officials at the six agencies are NASA, the Environmental Protection Agency and the depts.

32-Bit Computer to Alter Market

By Rick Vizachero
GCN Staff

The recent introduction of computers based on the Intel Corp. 80386 32-bit microprocessor will bring fundamental change to the office automation market.

The recently announced

Deakpro 386 line by Compaq Computer Corp. of Houston and the File Server line by Corvus Systems of San Jose, Calif., differ somewhat, but both signal the end

News Analysis

of the line for some other types of office systems — especially small, department-sized minicomputer and dedicated word processing architectures.

Expensive small-cluster systems have been under a slight threat from PC-based local area networks for some time. But only

lately have higher priced systems not based on microcomputer technology become extraordinarily non-competitive.

The recent developments making the difference are the arrival of a multitude of multiuser programs for data base, word processing, spreadsheet and communications needs for MS-DOS networks, the drop in the price of reliable PCs to less than \$1,200.

A good example of where departmental and work group market is heading is the face-off between the new PC All-in-One product from Digital Equipment Corp. and the new Compaq Desk 386.

PC-All-in-One is a combination see 32-Bit page

OPM Strives to Update Its Systems, Software

By Arnold S. Levine
GCN Staff

By any measure, the Office of Personnel Management has enormous responsibilities and, as with many central oversight agencies, limited resources with which to meet them.

Created by Congress in 1978, OPM is the successor to the old Civil Service Commission established by the Pendleton Act in 1883. Replacing an independent commission with a powerful executive who reports to the president is a definite advantage when an agency is modernizing its ADP operations.

OPM's principal mission is to administer the federal government's civil service system. As might be expected, OPM manages the civilian retirement system, collects, maintains and reports information on the federal work force, conducts (along with the FBI and the Defense Investigative Service) background checks on federal employees and administers examinations to applicants for federal employment.

But its authority also reaches into corners where one might not expect to find it. OPM supports the Justice Department in administering the Voting

see OPM page 36



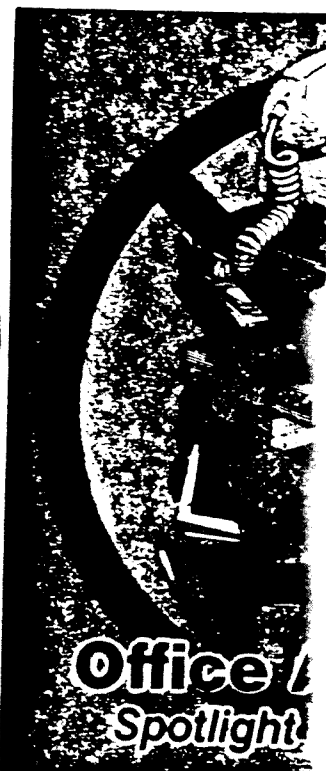
Supervisor Says Award Was Rigged

By Kevin Power
GCN Staff

An Army publications supervisor has said that she was pressured by superiors not to testify that the Army's \$300 million 600-S Sprinting contract was "wired" in favor of Electronic Data Systems Corp.

Testifying before the House Government Operations Subcommittee on Legislation and Security, Hope Robinson, chief of the Army's Advanced Operational Systems Office, said vendors competing for the 600-S contract were not treated fairly and that the entire procurement was rigged to favor EDS from the beginning. She said another Army employee, Maj. Stephen Baber, had taken actions that helped EDS win the contract.

"I believe it was wired from the see Army page 12



**GSA Executives Discuss
Telecommunications Strategies
See Story on Page 6**

Army from page 1

start," Robinson said. "Every attempt was made to rig the procurement. I tried to stop all of it without success."

The contract, awarded to EDS by the Government Printing Office on behalf of the Army, was canceled in June because of what the GPO termed a "serious technical error." The losing vendors — Xerox Corp., AT&T Co. and Volt Information Sciences — have charged the contract was awarded illegally. A General Accounting Office investigation, whose results were made public at the congressional hearing, supported many of the charges made by the unsuccessful bidders.

Subtle Pressure

Robinson also said she received "some subtle and not so subtle" pressure from Col. Frank Milwee, her supervisor, and Col. Fredrick Moss, chief of contract law for the judge advocate general, not to testify. She said they told her to "stay on the team" and warned that if she testified she would no longer be a "team player."

Rep. Jack Brooks (D-Texas), chairman of the subcommittee, said, "It is quite apparent that serious improprieties had occurred during the procurement process. I can assure you before this is all over we will get to the bottom of this."

According to Milton J. Socolar, a senior General Accounting Office official, the GAO's investigation into the 600-S contract award revealed that EDS was "improperly" allowed to lower its bid by about \$25 million, that the GPO allowed EDS to make corrections and lower its bid during undocumented meetings, that the Army gave EDS extra time and changed test scores to favor EDS, that benchmark test requirements for optical text scanning and for high-resolution printing had been

changed to benefit EDS, that an Army employee was assigned to the technical evaluation team even though the head of the Army publications directorate knew the employee was actively seeking a job with EDS's parent company, General Motors, and that government personnel responsible for evaluating contractor proposals attended cocktail parties with would-be contractors after each benchmark test.

Altered Benchmark Results

Robinson testified that during the benchmark testing, Baber, who as project implementation branch chief was in charge of the tests, had changed the scores given by evaluators and thereby guaranteed EDS first place.

"Baber changed the ground rules at will. It was like playing tennis without a net," she said.

Socolar, special assistant to the comptroller general, agreed, telling the subcommittee, "We found that Maj. Baber unilaterally changed the benchmark scores given by evaluators charged with scoring the benchmarks. As a result of Maj. Baber's changes, EDS won the benchmark."

Socolar said the GAO reported that Baber said he made changes to correct administrative errors or imperfections in the benchmark test and that all changes were based on what happened during the tests. But Socolar said Baber's changes were "not limited to the circumstances he described."

"Many of the changes he made appear to have been without any reasonable basis," Socolar said.

James R. Ambrose, undersecretary of the Army, said at the hearing that he had no knowledge of the allegations until very recently. He said he had thought that the problems with the contract were "more a matter of jurisdiction," referring to the controversy over whether the contract was for

printing services or data processing and subject to Brooks Act provisions governing ADP procurements.

"I did not have full comprehension of the range of the committee's interests until I made this review. My prior involvements in this 600-S matter were limited to inquiries about the reasons for the various appeals which had been set in motion by one entity or another," Ambrose said.

When Ambrose was asked why it had taken so long for him to be informed about the allegations and for the Army to begin taking action, he replied, "It fell into the cracks."

GPO Review

Public Printer Ralph E. Kennickell Jr., who heads the GPO, also testified about the awarding of the EDS contract. He said the GPO conducted an internal review of the 600-S procurement with its inspector general, and after discovering flaws with the acceptance of EDS' final offer he canceled the contract.

Kennickell said his inspector general's report also raised questions about the Army's benchmark tests, but the IG had not yet reached any conclusions.

Socolar, however, said the GPO never publicly defined what the "technical error" in the contract bid was. He said the GAO discovered that GPO employees had met with EDS officials twice in December. GPO allowed EDS to change what was incorrectly described as a "clerical error," negotiated a price reduction on another item and accepted a price that was not included in EDS' final offer, Socolar said.

These changes enabled EDS to lower its bid by \$25 million and move from third to first place in the price competition. "What is remarkable is the sheer size of the correction," Socolar said.

Socolar also said the face-to-face meetings were never documented. He said that during interviews with GAO investigators and the GPO inspector general staff, neither GPO contracting officer Richard Lee nor GPO contract specialist Kathy Phillips ever mentioned the circumstances surrounding EDS' price correction.

Unofficial Meetings

"The fact that these significant changes were made without any documentation of their surrounding circumstances raises serious questions," Socolar said. "The existence of these meetings did not surface until we received testimony from a GPO employee who acted as a messenger for the meetings."

Socolar said GPO personnel did not admit knowledge of the meetings until confronted with sign-in sheets from the GPO security desk that showed EDS personnel had entered the building for a meeting.

Kennickell said he was not aware of the meetings and did not know why the GAO investigators were not told about them.

Socolar said the inspector general is now conducting a criminal investigation to determine if Lee, Phillips and Patricia Gardner (Lee's supervisor) "made any false statements with regard to the meetings."

The other question raised at the hearing was the intent of conversations Jordan

Glogau, president of Media Net Ltd., a sub-contractor for EDS, had with Milwee and staff members of the Government Operations Committee about making a "business deal."

Brooks asked Glogau several times what he meant by the term "business deal" and read from portions of the GAO investigation report that quoted Glogau as stating there would be something in the deal for everyone.

Glogau explained that he approached the committee and Milwee because he thought the 600-S was still a good idea and that the contract should be divided among multiple vendors in order to avoid creating a monopoly. Glogau said the size of the 600-S tasks would have an "altered effect" on the computer publishing industry if the contract were awarded to only one prime contractor.

Additional Subpoenas

Brooks also called for an additional 12 subpoenas to be issued to individuals who were directly involved in awarding the contract to EDS.

Brooks said the committee would meet again but probably not until the Army has had more time to further investigate the case and act on the results of its probe.

No one has been disciplined or accused of criminal actions in the procurement. Meanwhile, GPO is preparing to start the procurement anew after voiding the award to EDS.

Index to GCN Made Available

An index to *Government Computer News* issues published from December 1982 through December 1985 is now available from Kadic Information Management Products in Silver Spring, Md.

The 206-page index contains more than 16,000 entries. Articles can be located by government agency, individual, company, topic and, in the case of regular contributors, author. A separate index provides references to books, journals, articles, laws, regulations and standards.

During the three-year period covered by the index, GCN grew from a 12-page monthly newspaper to a biweekly averaging several dozen pages of information about developments in federal, state and local government data processing, office automation, telecommunications and related subjects.

"GCN documents the history of policy issues involving the use of computing in the federal government and should not only be preserved, but made accessible," said Sarah T. Kadic, who heads Kadic Information Management Products. The index was prepared under an agreement between GCN and her company.

Copies of back issues and articles are available in several formats from University Microfilms International, 300 N. Zeeb Road, Ann Arbor, Mich. 48106.

Copies of the index are available for \$75, prepaid, from Kadic Information Management Products, P.O. Box 6786, Silver Spring, Md. 20906.

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Tell Us About Security

The Dec. 5 issue of *Government Computer News* will feature a special report on computer/communications security.

GCN welcomes submissions for this report in the form of white papers, tutorial and government application stories. Submissions should be typed double-spaced and be between four and eight pages in length, or submitted in ASCII format on an IBM PC-compatible diskette. Photographs (black and white preferred), charts and illustrations are welcome. Submissions should be accompanied by a short biography and telephone number of the author. The deadline is Oct. 31.

Submit articles to *Government Computer News*, 1620 Echon Road, Silver Spring, Md. 20903. For information about submitting articles or to obtain a copy of editorial guidelines, contact Susan Mankin, GCN, Editorial Department, tel. 301-445-4405.

ADP Contracts**CONTROVERSIAL GPO CONTRACT PLAGUED BY IMPROPRIETIES, GAO TELLS HOUSE PANEL**

The Government Printing Office's controversial \$300-million printing services contract (45 FCR 1041, 1072; 45 FCR 885; 45 FCR 232, 254) was plagued from the start by numerous improprieties during the evaluation and award process, the General Accounting Office reported last week.

GPO and Army officials improperly favored Electronic Data Systems Federal Corp. during the procurement process, Special Assistant to the Comptroller General, Milton Socolar told a House Government Operations subcommittee Sept. 25.

GPO allowed the company to lower its price (after best and final offers) by \$25 million during a series of secret meetings last December, he said. In addition, the Army allowed EDS an extra 12 hours for benchmark testing, and the agency's benchmark administrator unilaterally changed test results to favor EDS, Socolar observed.

Senior officials from GPO and the Army told the House Government Operations Subcommittee on Legislation that they were unaware of the scope of the procurement problems until recently.

Meanwhile, an Army technical representative on the project charged that the procurement had been "wired" in favor of EDS, adding that her superiors had sought to pressure her from testifying.

Next, a California businessman who had approached government investigators seeking to "make a deal" attempted to explain what he had meant.

GAO's Investigation

"We found serious deficiencies in the conduct of this procurement," Socolar told the panel. EDS, whose offer initially was evaluated as being among the least desirable on the basis of technical and price considerations, ultimately won the contract, he noted.

GPO canceled the \$300-million "printing services" contract in June, citing a serious technical error in the procurement process (45 FCR 1150), and saying that

negotiations would be reopened "with the issuance of an amendment to the original RFP to the vendors who submitted best and final offers."

However, no action has since been taken on the contract, because the House Appropriations Committee has directed the Defense Department to halt all funding for electronic printing services pending creation of a Defense Printing Agency, Socolar observed. In addition, Joint Committee on Printing Chairman Sen. Charles Mathias (R-MD) has ordered GPO not to proceed with the contract until further notice.

The procurement also has been the subject of litigation at two federal courts and the General Services Administration Board of Contract Appeals (45 FCR 1041, 1072; 45 FCR 885; 45 FCR 730; 45 FCR 306, 332, 45 FCR 232, 254). The U.S. Court of Appeals for the Federal Circuit finally ruled that the board lacked jurisdiction over protests against printing services contracts with ADP features (45 FCR 885). The court then issued a clarifying opinion, stating that the GSBICA's jurisdiction over ADP protests is limited to those involving procurements conducted under the Brooks Act (45 FCR 1041).

Socolar told the subcommittee that the procurement should have been conducted under the Brooks Act. The contract was intended to automate the Army's publishing base for technical and training manuals, he explained. The system was to be totally integrated, with each local area network capable of proving on-demand printing services with the aid of automated data processing equipment. The procurement also contemplated that the contractor develop a nationwide communications network, and provide all necessary software.

Electronic Data Systems' price for ADP totaled more than 49 percent of the contract price, Socolar noted, adding that the other offerors' prices reflected even higher percentages. Moreover, none of the offerors were printing firms; rather, the printing work was to be provided under subcontracts or purchase orders, he explained: "In our view, the... contract includes ADP equipment and services subject to the Brooks Act."

Allowing of Correction Scored

EDS was permitted to lower its price by \$25 million after best and final offers, and thus was able to move from third to first place in the price competition, Socolar maintained.

He explained that a week after best and finals were due, GPO contract specialist Kathy Phillips detected a "decimal error" in the EDS proposal. The contracting officer, after being advised of a possible mistake, requested verification. Two days later, on Dec. 26, 1985, a secret meeting was held at GPO, with the contracting officer and his supervisor attending along with five EDS project staffers. The EDS staff conceded there was no simple decimal error; rather, they had misunderstood a substantive amendment on unit pricing.

"This alleged EDS mistake was not a minor informality or clerical error for which correction could have been permitted without opening negotiations to

all," Socolar contended. Nevertheless, GPO allowed the company to revise its price.

The parties met again the following day, but there is no evidence as to what transpired, Socolar observed, adding the existence of these meetings was concealed. GPO files—including documents executed by Phillips and contracting officer Richard Lee—do not show that the meetings occurred. Similarly, an EDS letter relating to a mistake in pricing refers only to a prior telephone conversation. In fact, GAO investigators learned of the meetings from a GPO messenger, Socolar said, noting that Lee and his supervisor admitted to the meetings only after being confronted with sign-in sheets from the GPO security desk. A GPO Inspector General investigation is currently underway to determine whether they made false statements with respect to the meetings.

Benchmark Deficiencies

The Army modified its benchmark testing requirements for EDS, and the test administrator changed the results, according to Socolar.

First, EDS was allowed to demonstrate its optical scanner at another site, he noted. The company had asked for the change so it could borrow a scanner from General Motors rather than having to buy a new one. The GPO agreed, and gave EDS 12 hours for testing purposes; this time was not later deducted from the five days given to all offerors for benchmark testing.

In addition, the Army did not perform a benchmark on the RFP requirement for high resolution printing, Socolar stressed. All offerors except EDS came to their benchmark tests prepared to show compliance with this requirement, he said.

The test administrator, Maj. Stephen Baber, told GAO investigators that the offerors had met this benchmark qualification. But Lee conceded the test had not been run, adding that the government had failed to do its job. "The fact is, though, that EDS did not and could not demonstrate this requirement at its benchmark," Socolar pointed out, adding that the offerors who came prepared received no more credit than did EDS.

Baber also unilaterally changed at least four benchmark scores, resulting in EDS's winning the benchmark competition, Socolar told the subcommittee. For example, in one test the offerors were required to retrieve documents by title and number. Although EDS demonstrated only retrieval by number, it received a passing score from Maj. Baber.

Baber told the investigators that it was necessary to make the changes to correct for administrative errors and imperfections in the benchmark test. GAO disagrees. "Many of the changes he made appear to have been made without any reasonable basis," Socolar concluded.

The net result was that EDS went from third to first place in the benchmark test, Socolar emphasized.

Agency Heads Lack Knowledge

Testifying on behalf of GPO, Public Printer Ralph Kennickell said his office had focused primarily on the jurisdictional issues involved in the procurement. "My

strong belief that GSBGA was wrongly asserting its jurisdiction over my contracts required that we obtain immediate resolution of the issue, so we brought the matter as quickly as possible to the [Federal Circuit]."

Government Operations Committee Chairman Jack Brooks (D-Tex) asked Kennickell how much the agency had spent to defend its position in court.

"\$200,000 in the GSBGA litigation," the GPO chief replied. He added that outside counsel had to be hired because the agency did not have the necessary in-house expertise.

Kennickell said he did not receive the preliminary results of a GPO Inspector General probe of the procurement until last June 4. That oral report was followed by an interim written report a week later, which documented three errors justifying cancellation of the contract. The procurement was in fact cancelled nine days later, he emphasized.

Under questioning from Brooks and ranking minority member Frank Horton (R-NY), Kennickell admitted that none of the GPO employees involved in the case had been reprimanded or disciplined. Kennickell also acknowledged that the contracting officer's supervisor, Patricia Gardner, had since been promoted to Assistant Public Printer for Administration.

Undersecretary of the Army James R. Ambrose told the panel that he did not "have a full comprehension" of the problems with this procurement until earlier this month. "My prior involvements in this... matter were limited to inquiries about the reasons for the various protests and appeals."

"I assure you... that if there have been errors or improper conduct on any matters within Army purview, they are not condoned, and correction by appropriate means will be sought," Ambrose declared. "I will see to it that these allegations are promptly and thoroughly investigated."

Robinson Charges Intimidation

Hope Robinson, the Army senior contracting officer's technical representative on the project, testified that she had discovered that all offerors were not being treated fairly, and reported her findings to the chief of the Army Publications Directorate.

"Was [the procurement] wired for EDS?" Brooks wanted to know.

"Yes, every effort was made to influence the procurement for EDS; I tried to stop it without success," she replied.

"Who wired the contract?" the Texas Democrat asked.

"Maj. Baber did the hands-on work; he wired it," she answered.

Robinson, who had been subpoenaed by the panel earlier this month (46 FCR 502), charged that Baber had substituted benchmarks in the package sent to offerors. "I saw and approved the final version, but the final version wasn't transmitted to GPO and the offerors."

"When I discovered the preferential treatment and that the requirements of the benchmark tests were changed, I tried to advise the other offerors," Robinson said. She added that Army Publications

Directorate Chief Col. R.F. Milwee had assured her that the offerors would be treated fairly. "But it was just lip service," she concluded.

In addition, she charged that there had been pressure brought against her not to testify at the hearing. "You want to stay on this team, don't you?" was one Army officer's comment, she said.

Brooks and Horton asked Robinson who had threatened her.

Robinson reluctantly named Col. Milwee and two others. Brooks immediately ordered the committee staff to subpoena them.

'Let's Make A Deal'

The other subpoenaed witness at the hearing, Jordan Glogau, had been called to explain why he had contacted government investigators and indicated that a "business deal" could be worked out (46 FCR 502).

Glogau is president of MediaNet, Inc., a second-tier subcontractor to EDS. He told the panel that he had contacted the investigators because he thought the contract was a good idea, and feared that the Government Operations Committee would prevent it from "getting off the ground." Furthermore, he maintained that the approach taken by the Army was incorrect, and that the procurement would be more effective broken down into smaller contracts. "Giving the order to one vendor was creating a monopoly in a newly opening market," he declared.

Brooks then began the questioning, asking Glogau whether he told the GAO investigators that Milwee and Baber had counselled him against making "business suggestions?"

Glogau said that he didn't recall being told that.

Did they say that "a deal would put us all in Leavenworth [Federal Prison]?" Brooks wanted to know.

Visibly shaking, the California businessman said that he was told that it was improper and illegal to have such a discussion with the investigators, and that the two Army officials had refused to discuss such an arrangement.

Brooks then cited an instance where Glogau, having been told he was under investigation, reportedly said "they were right" about it being a set-up.

"Who is 'they'?" the congressman asked.

"Col. Milwee."

The questioning continued, with Glogau denying that he had discussed a deal with EDS. He also denied that he had discussed with Baber or Milwee the possibility of MediaNet getting additional Army contracts.

More Hearings Planned

The subcommittee will hold more hearings on this subject, according to congressional sources. "We're going to see this to the end," one staffer declared.

In addition to ordering subpoenas at the hearing for the three colonels alleged to have intimidated Ms. Robinson, Brooks directed that subpoenas be issued for the (1) three members of GPO contract administration team, (2) the five EDS staffers who were in attendance at the secret meetings last December, and (3) Maj. Baber.

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NEWS RELEASE

FOR IMMEDIATE RELEASE
Friday, April 11, 1986

**BROOKS ACCUSES JUSTICE DEPARTMENT OF MISLEADING COURT:
ASSISTANT U.S. ATTORNEY FOR D.C. SUBPOENAED BY HOUSE PANEL**

A hearing Thursday by the Subcommittee on Legislation and National Security focused on attempts by the Administration and others to circumvent the Competition in Contracting Act and resulted in issuance of a subpoena to force the appearance before the panel of the Assistant U. S. Attorney for the District of Columbia, John Bates. Chairman Jack Brooks (D-Tex.), said, "We moved to force Bates' appearance because the Justice Department prevented his cooperation."

The case, involving a \$300 to \$500 million procurement conducted by the Government Printing Office in behalf of the U.S. Army, has generated allegations of potential fraud and conflict of interest. The allegations of misconduct have been made by the losing vendors, AT&T, Xerox Corporation, and Volt, Inc. The winning bidder was Electronic Data Systems (EDS).

The Subcommittee criticized the Justice Department's efforts in conjunction with the Office of Management and Budget (OMB) and the Government Printing Office (GPO) to block a bid protest case from being heard under the Competition in Contracting Act by the GSA Board of Contract Appeals. The Competition Act, aimed at eliminating abuses in government purchasing, created special procedures in the General Accounting Office (GAO) and the General Services Administration Board of Contract Appeals to hear claims by companies that particular contracts had been awarded improperly or illegally by the government. Authored by Brooks, Congressman Frank Horton (R-N.Y.), and Senator William Cohen (R-Me.), the Act was passed in 1984 as part of a wide-ranging deficit reduction package. The bill was drafted in response to widespread waste and abuse with nearly \$100 billion of Federal procurements awarded annually on a noncompetitive basis--about two-thirds of all government contracts.

"Unfortunately, before the merits of the charges in this case could be heard, the Justice Department, in lockstep with OMB and GPO convinced the courts to halt proceedings of the Contract Appeals Board," Chairman Jack Brooks said.

(more)

These agencies are now asking the Federal Circuit Court of Appeals to enjoin the Board from ever considering the case. Brooks said, "They also want the Circuit to rule that Congress gave OMB the authority to determine the jurisdiction of the Board, which would allow them to circumvent the Competition in Contracting Act whenever they feel like it."

"In our hearing held on March 5, OMB insisted that they were carefully and objectively weighing the legal issues involved in the case," Brooks noted, "However, evidence has now been presented which clearly shows that OMB's so-called 'legal decision' had already been made in the back rooms of the Justice Department. It was a plan all along to gut the authority of the Board which is designed to enforce honest competition."

Brooks also sharply criticized the Justice Department for misleading Federal courts in its briefs. He stated, "It is unethical and improper for the Justice Department to present briefs to the courts which intentionally misquote from congressional committee reports."

In an effort to convince the courts that Congress intended for OMB to have the final say on the protest before the Board, the Justice Department, in a petition to the Federal Circuit for a writ of mandamus in this case, misquoted from the Government Operations Committee report on the Competition Act by using only half of the relevant paragraph. If the entire passage had been presented to the court, it would have been clear that Congress meant exactly the opposite of what Justice was asserting.

The portion of the report used by Justice is:

"With regard to OMB's authorities under the Brooks Act, the bill does not alter the current procedures for resolving conflicts between procuring agencies and GSA's procurement office"

The rest of the Committee report, however states:

"under the Assistant Administrator for Information Resources Management. However, the resolution of disputes (outside the courts) between procuring agencies and suppliers or potential suppliers shall be decided solely by the Board or the GAO under the procedures established by this bill. Further, a final decision of the Board may be appealed in accordance with the Contracts Disputes Act of 1978 (41 U.S.C. 601 et seq.)." (emphasis added)

Brooks stated, "The Administration has repeatedly gone to great lengths to oppose implementation of the Competition in Contracting Act. In a previous case, a Federal court had to go so far as to order OMB and the Department of Justice to follow the law." Brooks said, "Now these same agencies are attempting to strip out those parts of the Competition Act which they don't like, through 'creative lawyering.' In doing so, the Administration has blatantly misconstrued public law and misrepresented the intent of Congress in their appearances before the courts."

Documents presented at the March 5 hearing indicated that Assistant U.S. Attorney for the District of Columbia, John Bates, has detailed knowledge of the Administration's policy decision to oppose the law by circumventing the appeals board's authority. Bates failed to appear at today's hearing despite requests to Attorney General Ed Meese and a letter yesterday personally advising Bates of the subcommittee's desire that he testify at today's proceedings. Chairman Brooks said, "It is my conviction that Mr. Bates' testimony is one of the keys to finding out the extent of the conspiracy to circumvent this law."

Brooks noted, "We should all understand the stakes in this controversy. If the Administration is successful, Congress's efforts to eliminate waste, fraud and abuse from the Federal marketplace will be undermined. More importantly, the Administration would have made a mockery out of our system of justice. This cannot be tolerated."

Testifying today were Arthur R. Stowe, for the Printing Industries of America, representing 17,000 printing and graphic arts firms throughout the U.S.; Ralph E. Kennickell, Jr., the Public Printer, for the Government Printing Office; and Deputy Assistant Attorney General Stuart E. Schiffer for the Department of Justice.

Other members of the Subcommittee, in addition to Brooks, are Congressmen Don Fuqua (D-Fla.), Henry A. Waxman (D-Calif.), Stephen L. Neal (D-N.C.), Tom Lantos (D-Calif.), John Conyers, Jr. (D-Mich.), Frank Horton (R-N.Y.), Jim Saxton (R-N.J.), Joseph J. DiGuardi (R-N.Y.), and Thomas D. (Tom) DeLay (R-Tex.).

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NEWS RELEASE

FOR IMMEDIATE RELEASE
Friday, June 20, 1986

GPO Cancels \$300 Million Contract: Brooks Vows Continuing Investigation

The Committee on Government Operations, chaired by Congressman Jack Brooks (D-Tex.), has been informed that the Public Printer, Ralph E. Kennickell, Jr., of the Government Printing Office (GPO) was cancelling a \$300 million contract with the Electronic Data Systems Corporation (EDS). According to Kennickell, GPO was taking the action because it had determined "that a serious technical error occurred in the procurement"

The award of this contract, called the 600-S project, by the GPO in behalf of the Army has been mired in numerous allegations of misconduct, including circumvention of procurement law, bid prices being changed after best and final offers were received, test scores being changed which benefitted EDS, proposals being changed after award and possible conflict of interest. The General Accounting Office (GAO) has been investigating these charges at the request of Brooks and Congressman Frank Horton, Ranking Minority member of the Government Operations Committee.

According to Brooks, "While GPO did the right thing in cancelling this contract, I am determined that the GAO investigation continue. Given the serious nature of the allegations concerning this procurement, it is my view that they must be fully looked into by GAO to determine if criminal or civil remedies are warranted."

The 600-S contract was designed to fulfill the printing needs of the Army through a sophisticated computer and communications system to service some 200 sites worldwide. The contract was awarded to EDS on January 9, 1986. The losing competitors immediately protested the award.

The Subcommittee on Legislation and National Security, which Brooks chairs, has held 3 hearings on the GPO/Army procurement. Mr. Kennickell, in testimony before the Subcommittee in early April, stated:

(MORE)

- 2 -

"Mr. Chairman, I am confident when the facts pertaining to the issues in the bid protest case are brought out in an appropriate forum, they will demonstrate that my continued confidence in GPO printing procurement operations is well founded, and that it will be recognized as a 600-S contract awarded resulting from a full, fair and honest competition."

Brooks noted, "I am glad Mr. Kennickell has now seen the error of his ways. However, there is no assurance that GPO won't find a way to mess up this second procurement as well." Brooks continued, "I intend to have the Committee look very closely at what GPO does in its new procurement."

-30-

Review of 600-S
Job Code #329

Government Computer News Article June 29, 1986

DATE: 6/24/86

Board's Powers Limited by EDS Ruling

By Arnold S. Levine
GCN Staff

The U.S. Court of Appeals for the Federal Circuit has issued its long-awaited opinion in the case of Electronic Data Systems Corp. vs. the General Services Administration Board of Contract Appeals, upholding the Office of Management and Budget's authority to decide what ADP procurements are subject to board review.

The court's decision, written by Judge Helen Nies, resolves a major conflict over interpretation of the Brooks Act. It limits the GSA board's authority to establish its own jurisdiction.

In essence, it prohibits the board from adjudicating protests brought by unsuccessful bidders unless GSA had been involved at an early stage of the procurement through issuance of a delegation of procurement authority.

If a DPA has not been issued, then any protests of an award must be filed with the courts or the General Accounting Office, the decision seems to indicate.

The court ordered the GSA board to dismiss the bid protests at issue in the case. Although there were indications that the court's decision might be appealed, it is likely to mean that a current GAO investigation will be the only near-term examination of the protests on their merits.

In January, the Government Printing Office, acting on behalf of the Army, had awarded an electronic publishing contract to EDS. The next month, after two unsuccessful bidders for the contract protested the award, the GSA board suspended performance of the contract.

In its opinion, the board asserted that this was a procurement for general-purpose ADP equipment, that GPO therefore should have sought a delegation of procurement authority from GSA and that the board had the power to determine its own jurisdiction. The board promised to rule on the merits of the appeals by Xerox Corp. and Volt Information Sciences.

EDS and GPO both sought to overturn

that decision, and the Office of Management and Budget and the Court of Appeals took their side in the dispute. OMB ruled that, under the Brooks Act, it had the authority to resolve disputes between an agency and GSA over the applicability of the Brooks Act. On April 9 OMB sustained GPO's position that the EDS contract was a procurement of printing services and only incidentally a procurement of ADP equipment.

On April 10 the Court of Appeals heard oral arguments in the case, and on May 2 it issued an order vacating the Board of Contract Appeals' suspension of the contract. The court's full opinion was issued May 28.

In it, Nies noted that this case raised two questions for the court's consideration. The first had to do with the court's own jurisdiction and whether it could properly step into the dispute. The court ruled that it was the proper forum for considering the legality of an injunction issued by a federal agency, and the board's suspension of contract performance was indeed an injunction.

The court then turned to the protest jurisdiction of the Board of Contract Appeals under the Brooks Act. The panel concluded that, by assuming jurisdiction over the protests, the GSA board exceeded its statutory authority. The board had "prematurely entered the fray," disrupting the orderly procedure set out in the Brooks Act for resolving disputes involving ADP equipment, the opinion said.

Specifically, the board had taken too broad a view of its jurisdiction. Neither the Brooks Act nor the Competition in Contracting Act, which amended it, affected OMB's authority to arbitrate disputes over whether a procurement involves ADP equipment.

Even more important, the court said, was the board's mistaken assertion of its authority under CICA. Congress gave the board protest jurisdiction over "procurements conducted" under the Brooks Act, not those "which should have been conducted under the Brooks Act."

Under the Brooks Act, an agency seeking

to procure general-purpose ADP equipment submits an agency procurement request to GSA, which then can authorize the agency to proceed with one or more purchases through a DPA.

In its action on the case, the court said, the board concluded that the GSA administrator had failed to issue a DPA or require GPO to obtain one — but the board has no authority over the GSA administrator.

Additionally, for more than a year before this case arose, the protesting firms and EDS had been competing for the contract. Throughout that period, neither protestor ever asserted that GPO was buying ADP equipment or that GSA should have been involved. If the court were now to sustain the board's position, it would mean that agencies would not know until after the fact that they had conducted a Brooks Act procurement — a result that Congress never intended.

The court said it would not rewrite the Brooks Act to give the Board of Contract Appeals jurisdiction over procurements that should have been made under the Brooks Act. Instead, it vacated the decisions and orders of the board in the case and ordered it to dismiss the protests.

The decision may mean that EDS may proceed unhindered with the contract. However, an attorney for one of the protesting companies said he planned to ask the appeals court to reconsider its decision.

Meanwhile, GPO is not the only agency that has asked OMB to resolve an inter-agency Brooks Act dispute. The Department of Defense has asked OMB to resolve a related issue: whether custom software development contracts, not involving the procurement of hardware, are subject to the Brooks Act. The Board of Contract Appeals say that they are; DOD disagrees.

In a Jan. 30 letter to OMB Director James Miller, assistant secretary of Defense Robert Helm asserted that "custom software development is very different from off-the-shelf technology since the product is specially developed in close coordination to meet its unique mission needs."

USA Today 6/23/86

largest commercial aircraft order ever

INTERLEAF IPO: Interleaf Inc., which went public Friday, rescinded its initial public offering and will "redo the deal" this week. After the offering, Electronic Data Systems Corp. said the government canceled an EDS contract in which Interleaf was a principal subcontractor.

Procurement

Board Airs Disputes on Meaning of Brooks Act

Federal Contract Law

By Joseph J. Petrillo

When Congress decided to experiment with having bid protests decided by boards of contract appeals, its test case was a small portion of federal contracting. One board, and only one, was empowered to hear certain bid protests. The General Services Board of Contract Appeals received jurisdiction limited to procurements subject to the Brooks Act, 40 U.S.C. §759.

In capsule, the Brooks Act deals with procurements of "automated data processing equipment." Many battles have been waged over the meaning of these words. Because the basic structure of the Brooks Act is to place the General Services Administration in charge of ADP procurements, other agencies have resisted any attempt to apply the act broadly.

Until recently, these skirmishes were fought within the bowels of the bureaucracy. The new bid protest remedy, however, has brought this issue out into the open.

The Question of Scope

The scope of the Brooks Act is a crucial question for the board. Whenever a protest is filed before it, the board first must determine whether the procurement is within the scope of the Brooks Act. If the procurement is outside the scope of the act, then the board lacks jurisdiction and the protest must be dismissed.

It must rule on the Brooks Act question before it proceeds to order a stay of the procurement or address the merits of the protest.

Three recent decisions shed light on the extent of the Brooks Act and consequently the board's jurisdiction. One deals with whether support services are covered by the Brooks Act, another discusses the extent of the Warner Amendment exempting certain DOD procurements, and the third talks of interagency transactions.

ADP Support Services Ruling

In *SMC Information Systems Inc.*, GSB No. 8071-P, 85-3 BCA 118,296, the board decided that the Brooks Act covers support services. In that case, the protester objected to award of a contract for ADP support services, defined in the solicitation as "systems analysis, design and programming that are adjunct and essential to agency ADP activities but do not involve the actual computation or manipulation of data."

Ironically, GSA awarded the contract. GSA was the proponent of its own power under the Brooks Act, and so it did not object to the board's jurisdiction. However, the contract awardee intervened in the case and argued that the Brooks Act did not cover the support services in-

It found concern on behalf of the House of Representatives that definitions in the act not be so fixed and definite as to become obsolete because of future technological developments.

The board quoted from Rep. Jack Brooks, (D-Texas), the act's namesake, who explained that the bill "must necessarily be drafted in broad, general terms." Brooks noted that GSA needed the power to issue regulations that could be changed from time to time as circumstances warranted.

Having determined that the question could not be answered from the legislative history but that Congress decided to grant some definitional power to GSA, the board turned to the appropriate regulations.

Of course, those are the Federal Information Resources Management Regulations issued by GSA. In the view of the board, the FIRMR clearly answered the question. The Brooks Act applied to "ADP resources," which included, among other things, both "ADP services" and "ADP support services." The definition of this latter term was virtually the same as the definition of support services in the contract at issue.

Finally, the board discussed an opinion by the comptroller general that seemed to indicate that this type of support service was not within the scope of the Brooks Act. However, the board found that this 1978 opinion had been substantially undermined by a 1985 opinion by the comptroller general. The later opinion noted, with apparent approval, that the act had been interpreted to apply to ADP services and support services.

Interestingly, the board noted in passing but did not discuss an opinion by the Office of Management and Budget that also cast doubt on the application of the Brooks Act to support services. That ruling should have been of particular importance to the board because OMB is the agency the Brooks Act charges with adjudicating disputes between GSA and other federal agencies (40 U.S.C. §759(g)). Arguably, a determination by OMB on the scope of the Brooks Act should overrule a contrary view held by GSA. Unfortunately, the board did not address this issue.

Thus, the teaching of the *SMC Information Systems* case is that the Brooks Act does apply to ADP support services. It remains to be seen whether GSA will attempt to exert further control over this area than it has in the past.

Another area of controversy under the Brooks Act was addressed by the board in its decision in the case of *Julie Research Laboratories Inc.*, GSB No. 8070-P, 85-3 BCA 118,295. This ruling dealt with the extent of the Defense Department's exemption from the Brooks Act under the Warner Amendment. The Warner Amendment contains five separate categories of exemption from the Brooks Act. *Julie Research* deals with two of the five.

By way of background, the procurement

test and calibrate the Trident weapon system.

Brooks or Warner?

The Defense Department argued that the procurement was exempt from the Brooks Act under the Warner Amendment, and therefore, the board lacked jurisdiction. DOD pointed to two portions of the Warner Amendment as supporting its contention. First, it argued that the instrument controller was "an integral part of a weapon or weapon system." The second Warner Amendment exemption cited by DOD was broader; it exempts equipment or services "that are critical to the direct fulfillment of military or intelligence missions."

The board rejected both arguments. Pointing out that the instrument controller worked with certain attached devices and it was the attached devices that were used to calibrate and test the Trident weapon system, the board held that the controller was not "an integral part of a weapon or weapon system." The board held that the equipment was an integral part of a weapon system "only in the sense that it is lightweight and portable, and perhaps could be easily thrown at the enemy."

The board also rejected the argument that the equipment was critical to the direct support or maintenance of a weapons system. Again, it was the attached devices that actually supported the items used to maintain the Trident weapon system. If such equipment could be categorized as direct support equipment, the board felt that the term would be meaningless because everything that the Department of Defense acquired would be direct support equipment.

Again, the board concluded that "there is a limit to the length of the daisy chain." Accordingly, the board held that the procurement was not covered by the Warner Amendment exemptions to the Brooks Act, and so it had jurisdiction to go forward and resolve the case.

Interagency Transfer

The third decision deals with an interagency transfer; it is *Amdahl Corp.*, GSB No. 7859-P, 85-2 BCA 118,111. The case concerns an attempt by the Department of Treasury to acquire an IBM computer from the Federal Home Loan Mortgage Corp., better known as Freddie Mac. The protester argued that it was precluded from competing for this requirement by Treasury's failure to issue a solicitation and by a sole-source contract award to Freddie Mac.

Treasury argued that the board lacked jurisdiction to hear the protest. It stated that the agreement with Freddie Mac was an interagency transfer conducted under the Economy Act, 31 U.S.C. §1535. Thus, the board was faced with the question of whether the Brooks Act would apply to interagency agreements under the Economy Act.

The board found no conflict between the two measures. The Economy Act was merely one means of acquiring ADP equipment. The Brooks Act was intended to grant GSA exclusive procurement authority over such equipment. Whether the procurement was conducted by means of a purchase from the private sector or by means of an interagency transfer under the Economy Act was irrelevant.

In either case, the board held, the acquisition was within the scope of the Brooks Act. Therefore, it accepted jurisdiction and resolved the protest on its merits.

It is evident that this experiment in bid protest jurisdiction at the board is having a number of results. One of these results is to provide a forum, accessible to the private sector, for resolution of questions about the scope of the Brooks Act.

These three rulings answer important questions about the reach of the Brooks Act and, thus, GSA's authority over ADP procurement. We can expect more litigation on this question in the months to follow.

Petrillo is a partner in the Washington, D.C. law firm of Bowman, Conner, Touhey and Petrillo.

GPO from page 1

or leased, although all the offerers proposed to use computer-assisted elements in providing the requested printing. The Government Printing Office has never had any doubt that this procurement is within its exclusive authority over public printing and not subject to the GSA's authority over ADPE procurements."

Four influential congressmen joined in the fray, writing a letter to GSA Administrator Terence Golden that became part of the case record. The congressmen — the chairman and ranking minority member of the House Government Operations Com-

mittee and the chairman and vice chairman of the Joint Committee on Printing — said it was the position of their committees that procurements for printing systems and services should be made pursuant to Title 44 of the U.S. Code and the policies of the Joint Committee.

Where such procurements incorporate "general ADP features," they should also be conducted according to provisions of the Brooks Act, the letter said. Where the purchasing agency was unsure how to proceed, it should seek the guidance of GSA, GPO, the Joint Committee and the Government Operations Committee, it said.

The Board of Contract Appeals ruled

Feb. 4 that it did have the authority to hear the protests filed by Volt and Xerox. Judge Vincent LaBella's opinion said GPO is subject to the Brooks Act and "procurements for publishing and printing services which include ADP are subject to the Brooks Act notwithstanding GPO's failure to seek a delegation of procurement authority."

LaBella said the board was not determining in this ruling whether this procurement involved general-purpose ADP resources. GPO and EDS could still argue that it was not an ADP procurement, but that issue would be determined after the case had been decided on its merits, he said.

LaBella rejected GPO's arguments that it was exempt from the Brooks Act under provisions of various appropriations acts. Those exemptions were for a limited period — the fiscal year in which each was enacted — and reflected no congressional intent to extend the exemption for a longer term, he ruled.

LaBella's opinion not only held that the board had jurisdiction in this case, it said that the board — not OMB — has the authority to rule on the applicability of the Brooks Act and on its own jurisdiction. This authority is vested in the board by the Competition in Contracting Act, he said.

The Brooks Act specifically gives the GSA administrator the power, directly or by delegation, to "coordinate and provide for the economic and efficient purchase" of ADP equipment.

Dissatisfied with the GSA board's ruling, GPO not only took its case to OMB, it also asked the U.S. District Court for the District of Columbia to suspend the board's decision until the matter can somehow be resolved. If the court were to grant GPO's motion, any GSBGA jurisdiction over the case would be temporarily lifted.

In the first 20 years after the Brooks Act was enacted in 1965, there was only one case of an agency's appealing to OMB to resolve an interagency dispute through powers vested in OMB by Section G of the Brooks Act.

In the last month, not only has GPO appealed to OMB, but also the Department of Defense has asked OMB to deny the board's jurisdiction over procurements of customized software. OMB is reviewing its options for settling the dispute between GPO and GSA.

Meanwhile, the GSA board has yet to consider the merits of the protests filed by Xerox and Volt.

GPO, GSA in Tussle Over Contract Award's Legality

By Arnold S. Levine
GCN Staff

In a rare interagency dispute over interpretation of the Brooks Act, the Government Printing Office is trying to prevent the General Services Administration's Board of Contract Appeals from ruling on the legality of a GPO contract award.

GPO has asked the Office of Management and Budget to step in and declare that GSA has no authority over the procurement. GSA contends that it does have the authority and that OMB cannot overturn that authority.

The dispute between GPO and GSA hinges in part on the question of whether electronic publishing is more properly consid-

ered printing or automated data processing.

The GPO decision to award a major contract for integrated publishing services on Jan. 9 ignited the dispute. The contract to provide the Army with technical and training manuals went to Electronic Data Systems Federal Corp. EDS had submitted the lowest bid on the so-called "600-S" program and received the highest score on its proposal. GPO estimates that the contract's value will exceed \$300 million over its five-year life.

Two unsuccessful bidders, Xerox Corp. and Volt Information Sciences, asked the GSA Board of Contract Appeals to rescind the award, arguing that the EDS bid had not been responsive to the GPO solicitation.

They contended that the board was the proper agency to consider their protests because, they said, the 600-S program is an ADP procurement. It thereby falls within GSA's governmentwide procurement authority under the 1965 Brooks Act, they argue, and the board therefore has jurisdiction under the Competition in Contracting Act, which authorizes the board to adjudicate bid protests for procurements subject to the Brooks Act.

In response, GPO asked the board to dismiss the protests for lack of jurisdiction. GPO's position was that, because 600-S was a printing procurement, neither GSA nor its Board of Contract Appeals had jurisdiction over it. As the Public Printer, Ralph E. Kennickell Jr., explained in his letter to OMB Director James Miller III:

"No automatic data processing

Source: GCN February

5, Number 4

OMB Jumps Into Fray Over GPO Procurement

By Arnold S. Levine
and Peter Hager
GCN Staff

The Office of Management and Budget has intervened in the ongoing dispute between the Government Printing Office and the General Services Administration over award of a major contract, agreeing with GPO that the procurement in question is not covered by the Brooks Act.

OMB also directed GSA to revise its regulations to clarify the definition of ADP equipment, whose procurement is subject to GSA review under the Brooks Act.

In an April 9 letter to Public Printer Ralph Kennickell Jr., Wendy Gramm, OMB's director of information and regulatory affairs, upheld GPO's position that it could award a major Army printing contract to Electronic Data Systems without first seeking a delegation of procurement authority from GSA and without the award's being subject to later GSA review.

Gramm's letter said OMB sees a need for clarification of GSA's current regulations governing ADP procurements. It directed GSA to begin at once a rulemaking to determine whether to change the definition of ADP equipment covered by the Brooks Act and clear up any ambiguities. OMB does not expect to consider new requests for reviews until GSA has completed the rulemaking process, the letter said.

History of the Dispute

The GSA Board of Contract Appeals, in considering protests filed by three unsuccessful bidders, had concluded that the electronic publishing contract was to a significant degree an ADP procurement and thus was subject to its review.

However, GPO and the Defense Department appealed to OMB, which is empowered by the Brooks Act to review disputes between agencies about the Brooks Act. EDS and GPO also appealed in the courts.

The U.S. Court of Appeals for the Federal Circuit heard oral arguments the day after OMB issued its determination. Its decision on the jurisdictional issue may be weeks away.

The court had earlier stayed the GSA board's decision suspending contract performance. The court's action had allowed EDS to proceed with the contract work, which involves publication of virtually all the Army's technical and training manuals over the next five years. GPO awarded the so-called 600-S contract to EDS on behalf of the Army.

Meanwhile, members of a House subcommittee warned GPO that its continued refusal to recognize the GSA board's authority to resolve contract disputes could lead to reduced funding for GPO and the impeachment of GPO officials.

House Backs Board

At an April 10 hearing, members of the House Government Operations Subcommittee on Legislation and National Security argued that GPO is intentionally subverting the Brooks Act and the Competition in Contracting Act by attempting to sidestep the authority of the GSA board to settle protests of the award to EDS.

Rep. Jack Brooks (D-Texas), subcommittee chairman and sponsor of the Brooks Act, threatened to reduce future funding for GPO if it continued its battle against the board's authority.

Rep. John Conyers Jr. (D-Mich.) called for public exposure of GPO's "blatantly improper if not illegal misconduct" in the case.

Conyers said appropriations for GPO should be cut and that GPO officials responsible for the misconduct should be

taken before the House for impeachment proceedings.

Brooks argued that the functional core of the printing system in the 600-S contract depends heavily on computers, making it an ADP and not a printing contract. Consequently, the 600-S should adhere to the procurement guidelines established by the Brooks Act, Brooks said.

By seeking a resolution in the U.S. Court of Appeals, GPO is trying to "gut the authority of the GSA board," Brooks added. He denounced OMB and the Justice Department for siding with GPO. "OMB's decision has already been made months ago in the back rooms of the Justice Department," Brooks said.

GPO Responds

GPO's Kennickell testified that his agency was not trying to circumvent GSA or the law and that the procurement involved printing services rather than ADP. He claimed GPO ensured that the 600-S program received vigorous competition and that GPO complied with all applicable statutes and regulations.

Kennickell claimed GPO procurements are not under GSA authority and that GSA had indicated to GPO early in the procurement cycle that 600-S was not subject to the Brooks Act. Congress also granted GPO an exemption in 1976 from GSA procurement regulations so printing could be speeded and costs cut, Kennickell said.

Kennickell claimed that GPO and other agencies serviced by the printing office would suffer "irreparable harm" if the GSA board were allowed to hear the contract protests. GPO would have to bear additional legal costs, and printing jobs for the Army and Internal Revenue Service would be severely delayed if further litigation before the GSA board is required, Kennickell said.

Col. Raymond Milwee, of the Army, testified that such delays could jeopardize the

strategic readiness of the U.S. military.

The OMB ruling appeared to bolster EDS' position, but it was not clear in view of the court's involvement whether the questions surrounding GSA's authority would be resolved any time soon.

When GPO awarded the contract to EDS, three firms — AT&T Co., Xerox Corp. and Volt Information Sciences — filed a protest with the GSA board. In decisions handed down Feb. 4 and 6, GSBCA Judge Vincent LaBella concluded that GPO was contracting for ADP equipment and services, that the board had jurisdiction under both the Brooks and the Competition in Contracting Acts and that GPO should have sought a delegation of procurement authority from GSA before proceeding with the procurement.

Based on these conclusions, LaBella ordered the contract suspended pending the board's resolution of the protest on its merits. That was the decision stayed by the court.

OMB's decision is important for two reasons. First, it represents a significant use of OMB's power to resolve interagency disputes.

Second, this is only the second time since Congress enacted the Brooks Act in 1965 that OMB has used its authority under Section G of the act to resolve disputes between an agency and GSA over a Brooks Act determination.

OMB Gives Its Arguments

In its ruling, OMB cited two documents bearing on its role. In the House report accompanying CICA, the drafters made it clear — in OMB's view — that OMB's authority under the Brooks Act would remain unchanged. As the report put it, "The bill does not alter the current procedures for resolving conflicts between procuring agencies and GSA's procurement office." The second document is a 1975 letter opinion from assistant attorney general Antonin

Scalia, reviewing the legislative history of the Brooks Act. Scalia noted that the history of the act reveals "the clear congressional intent that GSA not have authority over contractors who happen to use ADP in the course of supplying other goods or services — even if the ADP equipment is wholly paid for by the government."

Gramm's letter said OMB would not rule on the merits of the dispute. OMB concluded that the GPO contract is not for ADP equipment under either GSA's Federal Information Resources Management Regulation or the only other OMB ruling under Section G of the Brooks Act — a 1976 opinion on a Transportation Department procurement.

The test, according to OMB's 1976 opinion, "is not whether some ADPE is required to be used in a contract or is actually used in a contract.... The test under our 1976 opinion and the FIRMR is whether the 'very subject matter' of what is specifically required by the contract is for ADP services."

The GPO contract did not require EDS to purchase ADP equipment or software for the account of the government. It did not require EDS to pass title to equipment or software to the government, and it was not a cost-reimbursement contract.

But even if these criteria had been met, OMB maintained, the contract would still not have been under GSA's authority because the ADP portion of the procurement was "severable" from the rest. ADP is not the essence of this contract; printing services are.

OMB also noted that:

- The contract does not specifically require a firm to furnish particular items of computer equipment.

- Computer capability under the contract is not under GPO control.

- The extent and type of computer use under the contract is completely at the discretion of EDS.

GPO Cancels Old Contract, Begins Again

GPO Cancels Old Contract, Begins Again

By Eric Fredell
GCN Staff

The Government Printing Office recently canceled an Army printing contract that has been under intense scrutiny for alleged irregularities.

An agency news release said a modification to the original request for proposals will be issued and the four vendors who gave best and final offers on the original contract will be able to compete for the new award. The four vendors are Electronic Data Systems Corp., which was awarded the contract in January, Xerox Corp., AT&T Technologies Inc. and Volt Information Sciences, El Segundo, Calif.

Public Printer Ralph E. Kennickell Jr. said he decided to cancel the \$300 million, five-year contract after the agency found "a serious technical flaw in the procurement process" prior to the award. He did not elaborate on that flaw.

However, Grant Moy, the agency's general counsel, said in a separate statement that the error occurred "in the manner in which corrections were allowed to mistakes made in the cost proposal section of the EDS best and final offer."

Unsuccessful bidders had complained in official protests that EDS was allowed to change its bid after submitting its best and final offer. An EDS spokeswoman said a math error was made on its bid price and the company corrected the error when GPO pointed it out. "It gave the impression of lowering the bid when in essence we were correcting a simple mistake," she said.

After EDS won the contract, all three other finalists protested the award, with two of them submitting their cases to the General Services Administration Board of Contract Appeals. The board was established by the Competition in Contracting Act to adjudicate bid protests for procurements covered by the Brooks Act, or those involving ADP equipment.

The third finalist, AT&T, filed its protest with the General Accounting Office, which referred the case to the GSA board where the other protests were pending.

GPO argued that the board did not have authority to settle the protest because the contract was for printing services, not ADP. Although EDS intended to use computers to fulfill the contract, GPO argued the RFP did not specify the use of computers.

The protest plunged into a legal labyrinth when the board ruled it had the authority to hear the Volt and Xerox protests and then suspended EDS' performance of the contract. That move prompted GPO to ask the Office of Management and Budget to determine whether the GSA board had jurisdiction.

U.S. District Court for the District of Columbia, which lifted the suspension of the contract.

From there, the case went to the U.S. Court of Appeals, which in late May essentially sided with GPO, EDS and OMB in ordering the GSA board to dismiss the bid protests. Because GSA had not issued a delegation of procurement authority — required for Brooks Act buys — the board had no legitimate involvement in the protests, the court ruled [GCN, June 20].

Earlier, OMB ruled that it did have authority to determine whether the procurement fell under the Brooks Act and decided it did not. Therefore, the two decisions effectively prohibited the board from hearing the case.

AT&T asked the appeals court to reconsider its decision but withdrew the appeal after the contract was canceled.

Although recompeting the contract ended the protests, the case is under investigation by the General Accounting Office. Rep. Jack Brooks, the Texas Democrat who heads the House Government Operations Committee, has been highly critical of GPO and OMB, characterizing their actions as an attack on the 1965 Brooks Act and the 1984 Competition in Contracting Act, both of which he authored. He also requested the GAO investigation.

In a statement issued after GPO canceled the contract, Brooks said, "While GPO did the right thing in canceling this contract, I

am determined that the GAO investigation continue. Given the serious nature of the allegations concerning this procurement, it is my view that they must be fully looked into by GAO to determine if criminal or civil remedies are warranted."

Besides the allegation that EDS changed its bid price after submitting its best and final offer, other issues are alleged changes in test scores benefiting EDS and changes in proposals after the award was made. Also, GAO is investigating allegations included in the vendor protests that an Army employee who worked on the original printing services RFP was hired by EDS and later returned to the Army before a contract award was made.

The EDS spokeswoman, Nancy Voith, said EDS did not hire such an individual and that the allegation is "categorically untrue." She said, "We never paid him a salary. He never came to work."

The GAO investigation is expected to be completed late this month or next month.

All four finalists for the original award said they will review the new proposal and that they anticipate bidding on the new RFP.

A GPO spokeswoman said she does not know when the new RFP will be released or when the contract will be awarded. She indicated that more details on the "technical error" leading to the contract's cancellation may be available when the new RFP is released.

computer News, July 1986

Army Starts Own Probe Into EDS Contract

By DAN TRIGOBUFF

WASHINGTON—In yet another development, the Army has launched its own investigation into the award of a \$300 million contract for computerized printing to Electronic Data Systems Corp., amid charges by Congress that EDS had received illegal favorable treatment.

Army undersecretary James Ambrose told congressmen that he had not appreciated the seriousness of the allegations before the General Accounting Office investigation, which caused him to launch his own.

Ambrose made his remarks at a Government Operations Committee hearing where the GAO reported that an Army officer had boosted the EDS test scores for the 600-S contract with the Government Printing Office (GPO) and that, in a secret meeting, EDS was allowed to lower its price by \$25 million.

The price change, originally attributed to "clerical error" and "decimal-point error" allowed EDS to move from third to first in the rankings for the award.

"Serious . . . Error" Admitted

The GPO terminated the contract in June and began a new procurement, admitting "a serious technical error" but providing no other details (see June 30 MIS Week, page 4).

The official Army statement, dated Sept. 26, said, "As a result of information and testimony given during the House subcommittee for legislation and national security of the Committee on Government Operations hearing conducted Sept. 25, 1986, the

Undersecretary of the Army James R. Ambrose has directed that an investigation by appropriate agencies be conducted to determine the facts of allegations raised during the hearing. The Army treats very seriously any allegations concerning potential fraud, waste or abuse or personal misconduct and will investigate accordingly in this case."

Rep. Jack Brooks, D-Tex., agreed to postpone his own investigation while the Army proceeds, but Capitol Hill sources said Brooks was not likely to "give them too much time before Brooks gets back into it."

The outspoken Brooks has attacked the GPO printing contract frequently, and recently lambasted both Ambrose and GPO chief Ralph Kennickell for their slowness in realizing the problems with the contract.

Ambrose admitted before the Government Operations Committee that he had only recently been made aware of the seriousness of the allegations and Kennickell has steadfastly defended the contract since its award.

The 600-S contract has been the subject of controversy since it was awarded to EDS in January. The unsuccessful bidders, AT&T Information Systems, Volt Information Systems and Xerox Corp., made allegations similar to the GAO's findings in protesting the award before the General Service Administration's Board of Contract Appeals (BCA).

But the question of impropriety in the procurement nearly became lost in a maze of administrative and legal actions in federal courtrooms and agencies which first had to determine

where among them lay jurisdiction over the matter (see Jan. 27 MIS Week, page 8).

The GSA claimed authority over the matter because of the Brooks Act—named for its author, Jack Brooks—which gives GSA jurisdiction over automated data processing (ADP) procurements. This raised the added charge that the GPO improperly circumvented GSA in the printing procurement.

But GPO insisted that the contract was not for ADP, but for printing services, which happened to involve computerized equipment, and was therefore not directly within the target range of the Brooks Act.

The Office of Management and Budget (OMB) supported the GPO's contention and a federal court dismissed the losing bidders' claims made before the BCA, contending that the appeals board lacked jurisdiction. Those protests remain in the federal courts.

While the GAO insists that the procurement was within the purview of the Brooks Act, that issue seemed less significant beside the charges that the procurement was rigged in favor of EDS.

Specific Charges

Specifically, GAO found that: • EDS was allowed, during face-to-face meetings with GPO officials, to lower its bid by \$25 million, after final offers were supposed to have been submitted. Initially, the change in numbers was attributed to a "clerical error," but GAO found no documentation supporting this;

• Testing irregularities favored EDS, including lowered benchmark standards and altered scores;

• Government employees attended parties with EDS and other bidders, following benchmark testing, and

• An Army employee, Anthony Cuneo, solicited employment from EDS's parent company, General Motors, while still a member of the 600-S technical evaluation team. EDS offered Cuneo a job, GAO said, but withdrew the offer when Cuneo disqualified himself from the 600-S project, purportedly because of complaints raised by 600-S competitors. Cuneo returned to a different job with the Army.

At the center of the testing allegations is Army Maj. Stephen Baber, administrator for the tests. Witnesses have told congressional investigators that Baber made "every effort" to sway the procurement toward EDS. GAO believes Baber lowered the benchmarks and weighted the results in EDS's favor "without any reasonable basis," but has not found a motive for the actions.

"The Army will have about a month or so to found out why he (Baber) did it," said a Capitol Hill source. "If they don't, Brooks will get back into it."

If Brooks continues his probe, he will likely subpoena several Army and GPO officials, as well as EDS marketing and legal staff, congressional insiders said.

Besides Congress and the Army, the GPO's Inspector General is also investigating the contract award.

Memory Doubled On Burroughs A 3

DETROIT—Burroughs Corp., announced last week that it has doubled the internal memory for base-priced models of its A 3 entry-level computers while maintaining current prices.

Internal memory for the base packaged systems of the A 3 D, A 3 E and A 3 F has been increased from 3 Mbytes to 6 Mbytes.

Upgrade processor kits, starting at \$35,000, permit the A 3 D, A 3 E and A 3 F models to expand up to 24 Mbytes of internal memory, in increments of 3 Mbytes. The A 3 K memory is expandable to 48 Mbytes of memory. All upgrades can be done on the customer site.

A typical configuration of an A 3 D, with 6 Mbytes of memory, user interface processor, tape/printer controls, 123-Mbyte built-in disk drive and one operator display terminal, now lists at \$95,500. The previous price was \$113,000.

DEC, CAD Approve Marketing Accord

MERRIMACK, N.H.—Digital Equipment Corp. here and Computer Aided Decisions Inc., Boston, will work together to sell systems for the investment management industry under a recently signed cooperative marketing agreement.

The pact establishes a "cooperative mode of operation which actively promotes the sale" of CAD's five investment management software modules and DEC's VAX hardware.

CAD's software includes the Expanded Portfolio Valuation System.

selves. Deputy Defense Secretary William Taft defended DLA's role, while Navy Secretary John Lehman maintained that the Navy could buy its own supplies without hiring any additional personnel.

Wade, Babers Defend DLA

During an investigations subcommittee hearing Feb. 25, Assistant Secretary of Defense (Acquisition and Logistics) James Wade defended DLA as a "sound and essential organization." Wade pointed out that centralized buying saves money and avoids duplication.

As for the charge that DLA ought not to be buying items peculiar to the services, Wade explained that over the years, DLA has come to realize that it is cheaper and simpler to buy a "family of items," even if some of them happen to be service-unique.

Wade insisted that the military services do not have the personnel or the expertise to take on DLA's functions and that any proposal to transfer DLA's functions to the services would be "doomed to failure."

Gen. Donald Babers, head of DLA, told the panel that the services themselves often ask DLA to buy service-unique items for them.

Subcommittee chairman Bill Nichols (D-Ala), who is a sponsor of HR 4237, asked what percentage of DLA's 52,000-member workforce are military. Babers replied that only 2 percent are military; the rest are civilian. Nichols expressed concern about whether a predominantly civilian staff could be counted on to carry out their duties during wartime.

Nichols indicated that the basic concept of a centralized buying agency is a good one.

Rep. James Courter (R-NJ), sponsor of HR 4068, which would abolish both DLA and DCAA, testified on his bill before the subcommittee Feb. 26, but it appears there is little sentiment on the committee for that approach.

Bill Termed 'Weak'

At a Feb. 25 press conference announcing the measure, Skelton said he plans to introduce a separate bill dealing with defense agencies that "will go further" than HR 4237 in defining DLA's charter.

Aspin acknowledged that the provisions in HR 4237 are "weak" and said they may be strengthened after Skelton's bill is introduced.

The other defense reorganization measures introduced with HR 4237 include: HR 4234, to strengthen the role of the commanders in chief of the combatant commands; HR 4235, to create a joint subspecialty in the military services; and HR 4236, to combine the top staffs of each of the military chiefs of staff with those of their respective service secretaries.

The measures are intended as a followup to HR 3622, a bill recently passed by the House which would reorganize the Joint Chiefs of Staff. Aspin, Nichols, and Skelton also co-sponsored that measure.

Highlights of the other three defense reorganization measures introduced Feb. 26 are:

- **Integrate staffs.** HR 4236 would combine the staffs of the service secretary and the military chief of staff of each service. Certain functions would be assigned to the military, while others would be assigned to civilians. The measure requires a 15 percent reduction in the size of the combined staffs from the

original staff levels. That would mean a reduction of about 1,300 to 1,600 positions.

- **Strengthen role of CINCs.** HR 4234 would strengthen the role of the commanders-in-chief (CINCs) of the combatant commands by giving them more say in the budget process, as well as more say in how their commands are organized. The measure would permit the CINCs to have a role in the selection and removal of their subordinates. In addition, the bill would transfer certain support and administrative functions to the CINCs. For example, the bill would give the CINCs the authority to say where ammunition will be stored.

- **Promote jointness.** HR 4235 would create a joint subspecialty of military officers who would be trained in unified operations and who would be assigned primarily to the unified commands and the Joint Staff. The assignments and promotions of such officers would be removed from the control of their respective services.

The four reorganization measures are expected to be folded into the FY 1987 defense authorization measure.

Meanwhile, the Senate Armed Services Committee last week continued marking up its defense reorganization measure. The committee will not release any information on the bill until it has been reported out. Also, the committee has indicated that it will consider the recommendations made by the Packard Commission before reporting out the bill.

Text of HR 4237, regarding the support agencies, appears at page 396.

Text of HR 4236, reorganizing the military departments, appears at page 398.

ADP Protests

DISTRICT COURT CAN'T REVIEW GSBGA PROTEST RULING; SUIT TRANSFERRED TO CAFC

The federal district courts do not have jurisdiction over appeals from bid protest decisions by the General Services Administration Board of Contract Appeals, the U.S. District Court for the District of Columbia decides.

Since the protester initially chose the board as its forum, any appeal from the board's decision must go to the the Federal Circuit, Judge Thomas Hogan says. (Electronic Data Systems Federal Corp. v. General Services Administration, DC DC No. 86-353, 2/21/86).

In *Xerox Corp.* (45 FCR 232, 254), the board decided that it had jurisdiction to resolve protests against a GPO printing services contract because the procurement had automated data processing features. The GSBGA also emphasized that it had authority to decide whether a procurement is subject to the Brooks Act, and that the Office of Management and Budget's authority under the Brooks Act to resolve interagency disputes does not divest it of this jurisdiction.

In a second ruling in *Xerox*, the GSBGA held that it could suspend a protested contract even though the contracting agency had not obtained a delegation of procurement authority (45 FCR 277). The GSBGA suspended the contract and barred GPO and the Army from satisfying any of the contract requirements pending a GSBGA decision on the merits.

Meanwhile, the awardee—Electronic Data Systems Federal Corp.—filed suit in federal district court, charging that the board lacked jurisdiction over the GPO procurement and could not suspend the contract. Earlier this month, the court ruled that OMB's authority to resolve interagency disputes, coupled with likely harm to the contracting agency, justified halting ADP protest proceedings at the board (45 FCR 306, 332). However, OMB should be given a chance to rule on the jurisdictional dispute between the board and the GPO, Judge Hogan concluded, lifting GSBICA's suspension of the procurement for ten days or until OMB issues a ruling, whichever comes first.

Noting that the ten days refers to *business days*, under Rule 6 of the Federal Rules of Civil Procedure, a GPO attorney said the TRO is scheduled to expire Mar. 5; OMB has agreed to rule on or before Mar. 4, he said.

Transfer to Federal Circuit

Following Judge Hogan's ruling Feb. 19, GSA filed a motion to transfer the case to the U.S. Court of Appeals for the Federal Circuit. The board's review of ADP protests is governed by the Contract Disputes Act, and under the Contract Disputes Act, the CAFC has exclusive jurisdiction over appeals from the boards, GSA noted.

The district court agrees. "Although alternative forums for review [of bid protests] are available at the outset, a protester locks in an appellate route by choosing an initial forum," Judge Hogan explains.

In this case, Xerox and Volt Information Sciences Inc. chose the GSBICA for their protests. Moreover, EDS made the same arguments before the board as it seeks to make now. "The appropriate appellate forum for the GSBICA's decision is the Federal Circuit," the district court concludes, adding that it lacks jurisdiction to hear EDS' contentions.

Noting that the GPO initially determined that the contract was not one for ADP equipment, Electronic Data Systems contended that the disputed procurement was not conducted under the Brooks Act. Consequently, the GSBICA had no jurisdiction over the protests.

These arguments were raised at the board, addressed in the GSBICA's decision, and remain subject to CAFC review, the district court emphasizes. According to Judge Hogan, EDS's suit seeks collaterally to attack the board's adverse ruling. "Whatever the merits of these claims, Congress makes clear that they belong in the statutorily designated appellate body—the Federal Circuit," the judge declares.

The court also rejects EDS's contention that Congress intended to give contractors broad access to the district courts for review of their contracts. There is no allegation of breach or impropriety by the contracting agency, the court points out. "The district court's post-award jurisdiction does not encompass actions brought to review the GSBICA's proceedings or assertion of jurisdiction, which is fundamentally all plaintiff is seeking here."

Ripeness

Finally, Electronic Data Systems argued that the CAFC would not hear its suit, because it does not involve an appeal from a final board decision.

However, the district court refuses to make a determination as to the finality of the GSBICA's decision. But, any lack of finality merely postpones the CAFC's exercise of jurisdiction, Judge Hogan explains. "Even if this case were not ripe for review... the court would have to transfer it to the appropriate forum for dismissal." Accordingly, the suit is transferred to the Federal Circuit.

The temporary restraining order (45 FCR 306), which was intended to give OMB a chance to rule on the jurisdictional dispute, will remain in effect, the court adds, in order to preserve the *status quo* until the CAFC can rule on the question of interim relief. "The temporary restraining order accordingly shall expire ten days from the date of its issue, or upon a decision by the Federal Circuit as to interim relief, or upon the decision of OMB on EDS' inquiry, whichever comes first."

Brooks, Horton Call for GAO Probe

Meanwhile, House Government Operations Committee Chairman Jack Brooks (D-Tex) and ranking minority member Frank Horton (R-NY) asked the General Accounting Office to investigate possible irregularities in this GPO contract:

- The Army's use of GPO to administer the procurement, allegedly to circumvent the Brooks Act.
- Charges that one prospective contractor was permitted to change its prices after receipt of best and final offers.
- Alleged alteration of test scores.
- Charges that EDS was allowed to change its proposal after award.
- Allegations of conflict of interest.

"Each contractor, win or lose, must feel that he has been given a fair shot at winning the contract," Brooks and Horton commented. "Unfortunately, more and more cases of favoritism, conflict of interest and fraud are coming to [our] attention; this is a disturbing trend."

Although the procurement has generated multiple bid protests, GAO should investigate to determine if any of the allegations are true, Brooks and Horton wrote Comptroller General Charles Bowsher. "Your investigation should be completed no later than July 15."

Congressional Panels' Joint Letter

In another development, the House Government Operations Committee and the Joint Committee on Printing have written to GSA Administrator Terrence Golden, indicating problems in the procurement of printing services.

"Owing to rapidly evolving technology, considerable confusion has arisen concerning the manner in which certain products and services incorporating both printing and automated data processing features are procured," the letter noted. "The lack of certainty in some quarters about the procurement authorities required in such cases prompts us to comment jointly on the matter."

"It is the position of [both committees] that in procurements of this nature all pertinent laws, regulations and guidelines should be [followed]," the letter declared. Thus, procurements for printing systems and services should be made pursuant to §§501 and

502 of title 44, U.S. Code, and the policies and guidelines of the Joint Committee on Printing. "Where such procurements incorporate general ADP features, they also should be conducted in accordance with the provisions of PL 89-306 (Brooks Act)."

The Joint Committee on Printing, by signing the letter, did not conclude that the GPO procurement involved in the protest was subject to the Brooks Act, a staffer told FCR Feb. 21. Rather, the letter recognized that some printing contracts have ADP features, and sought to foster greater cooperation between the two agencies. It was not intended to represent the committee's views on Brooks Act jurisdiction, the staffer emphasized. "It has to be determined based on the facts and the law," he said, adding that there was no intent to influence jurisdiction.

"We support GPO's efforts to obtain printing services in this manner," the staff member acknowledged. "But they need to comply with the statutes that affect them." The committee will "abide by the decisions on jurisdiction rendered by those forums charged with making the determination," he said.

Conflicts of Interest

MARKUP OF HOUSE CONFLICTS BILL DELAYED DUE TO CONTROVERSY

Rep. Dan. Glickman (D-Kan), bowing to pressure from members of the House Judiciary subcommittee he chairs, last week abruptly canceled a scheduled markup of HR 2554, a measure aimed at preventing conflicts of interest in Pentagon procurement officials, congressional staff sources told FCR.

Glickman, who chairs the Judiciary Subcommittee on Administrative Law and Governmental Relations, had intended to offer substitute language that would drastically weaken the measure by limiting its scope and expanding the exemptions, contrary to what the bill's sponsor, Rep. Charles Bennett (D-Fla), who is not a member of the committee, had urged at a recent hearing before the panel (45 FCR 196).

Subcommittee member Barney Frank (D-Mass) was among those who opposed the language and who prevailed on Glickman to postpone the markup. The markup has been rescheduled for Tuesday, Mar. 4, and Glickman has indicated he will submit the proposed changes individually instead of as a package.

Limit Scope, Expand Exemptions

One of the provisions in Glickman's proposal would substantially narrow the applicability of the bill's two-year ban on post-government employment with a defense contractor. Under his proposal, the ban would apply only to those who, within one year of leaving DOD—not two years, as in the original version—had participated "personally and substantially" in a procurement function with respect to a contractor through "regular, direct contact" with that contractor. According to House sources, fewer individuals would meet that test than would meet the "significant responsibilities" test now contained in HR 2554.

Also, Glickman's proposal would enable the defense secretary to exempt not just individual positions, but entire categories of positions, from the requirements of the bill.

In addition, Glickman's proposal would allow any individual who had applied to the Office of Government Ethics for an opinion on the propriety of accepting a position with a particular contractor to go to work for that contractor, if the Office does not advise him/her to the contrary within 30 days.

One issue Glickman's proposal does not address is broadening the scope of the bill to apply to all federal employees, not just DOD employees. Although Glickman favors such a change in principal, House rules requiring that amendments to a bill be germane apparently prohibit him from including such a provision. One approach being considered is to seek a waiver of the germaneness rule from the Rules Committee and offer such a provision on the House floor.

Meanwhile, the House Post Office and Civil Service Subcommittee on Human Resources held a hearing on the measure Feb. 26. Those testifying against the measure included Hugh Witt of the Aerospace Industries Association, Kathleen Buck of the DOD General Counsel's office, and David Martin, director of the Office of Government Ethics. Reps. Bennett and Barbara Boxer (D-Calif), a co-sponsor of HR 2554, testified in favor of it.

Subcommittee chairman Gary Ackerman (D-NY) indicated that he favored adding a provision to exclude from the bill DOD employees who are rified, i.e., terminated for budgetary reasons. The panel has not yet set a markup date for the measure.

HR 2554 has a long and complicated history. The measure was introduced last year and referred to the Armed Services Committee, of which Bennett is a member. Over Bennett's objections, that committee reported out a different version of the bill and then referred it to both the Judiciary and Post Office and Civil Service Committees, which were given until March 15 to make any changes they see fit. (The committees are considering seeking an extension of that date.)

In the meantime, Bennett succeeded last summer in getting the House to agree to include the original version of his bill in the FY 1986 DOD authorization act. However, House and Senate negotiators subsequently altered the provision. Bennett and Boxer objected, but to no avail.

Bennett has now appealed to the Judiciary and Post Office and Civil Service Committees to have the original language of his bill restored. That version would apply to a broad spectrum of procurement officials. In addition, it would not exempt high level officials.

Regardless of the outcome of the latest round of action on the measure, Bennett has indicated that he intends to offer the original language as an amendment to the FY 1987 DOD bill.

Defense Program

GRAMM-RUDMAN WILL CAUSE PROGRAM DELAYS, REDUCED QUANTITIES, DOD COMPTROLLER SAYS

Pentagon Comptroller Robert Helm warned a House Armed Services Committee panel last week to expect delays in contract delivery dates and reduced quantities, as a result of the Gramm-Rudman balanced budget act.

Appearing before the procurement subcommittee Feb. 24, Helm indicated that, because of the uncer-

Opening Statement of Congressman Jack Brooks
Hearing on Efforts by Federal Agencies to Circumvent
the Competition in Contracting Act (Part 3)
Legislation and National Security
Thursday, September 25, 1986

THE SUBCOMMITTEE WILL COME TO ORDER. TODAY, WE WILL CONTINUE OUR HEARINGS INTO THE AWARD OF THE COMPUTERIZED PRINTING CONTRACT TO THE ELECTRONIC DATA SYSTEMS (EDS). THIS CONTRACT, COMMONLY CALLED THE 600-S PROJECT, INVOLVES A \$300 TO \$500 MILLION PROCUREMENT CONDUCTED BY THE GOVERNMENT PRINTING OFFICE (GPO) ON BEHALF OF THE U.S. ARMY. SERIOUS ALLEGATIONS OF FRAUD, BID RIGGING, AND CONFLICT OF INTEREST HAVE BEEN LEVELED AGAINST THE AWARD OF THIS CONTRACT BY THE LOSING VENDORS -- XEROX, AT&T, AND VOLT INDUSTRIES.

THE AWARD WAS SUBSEQUENTLY PROTESTED BY THESE COMPANIES TO THE GSA BOARD OF CONTRACT APPEALS AS PROVIDED BY THE COMPETITION IN CONTRACTING ACT. HOWEVER, BEFORE THE ALLEGATIONS COULD BE ADDRESSED, EDS, SUPPORTED BY THE JUSTICE DEPARTMENT AND OTHER AGENCIES FILED SUIT IN THE FEDERAL COURTS TO BLOCK THE BOARD FROM REVIEWING THE CASE. UNFORTUNATELY, THIS CAST OF CHARACTERS WON THEIR CASE ON A PROCEDURAL TECHNICALITY, AND THE BOARD'S PROCEEDINGS WERE HALTED.

IN ALL THIS LEGAL MANEUVERING AND CREATIVE LAWYERING, VERY FEW PEOPLE SEEMED TO BE CONCERNED ABOUT THE SERIOUSNESS OF THE ALLEGATIONS. THIS INCLUDED THE ARMY, OMB, AND EVEN THE JUSTICE DEPARTMENT. NONE OF THESE AGENCIES SEEMED OVERLY CONCERNED THAT THE AWARD MAY HAVE BEEN IMPROPER OR THAT EVEN CRIMES MAY HAVE BEEN COMMITTED. AS A RESULT, I'M SURE THOSE INVOLVED WITH THE AWARD OF THIS PROCUREMENT FELT THEY WERE HOME FREE, AND THERE WAS NO CHANCE THEY WOULD BE HELD ACCOUNTABLE FOR THEIR ACTIONS.

WELL, THEY WERE WRONG. CONGRESSMAN HORTON AND I URGED GAO TO CONTINUE ITS INVESTIGATION INTO THE ALLEGATIONS OF FRAUD AND MISCONDUCT ASSOCIATED WITH THIS PROCUREMENT. WE BELIEVED THAT SINCE THE BOARD WAS STOPPED FROM REVIEWING THIS CASE, THIS SUBCOMMITTEE WAS THE ONLY AVAILABLE FORUM WHERE THE CHARGES COULD BE THOROUGHLY REVIEWED.

AS MOST OF YOU KNOW, THE PUBLIC PRINTER WAS FORCED TO CANCEL THIS CONTRACT AS A RESULT OF EVIDENCE UNCOVERED EARLIER BY GAO. IT IS QUITE APPARENT THAT SERIOUS IMPROPRIETIES HAD OCCURRED DURING THE PROCUREMENT PROCESS. TODAY, WE WILL BE REVIEWING GAO'S FINDINGS TO DETERMINE WHAT ELSE NEEDS TO BE DONE TO GET TO THE BOTTOM OF THIS MATTER. AND, I CAN ASSURE YOU BEFORE THIS IS ALL OVER, WE WILL GET TO THE BOTTOM OF THIS.

Field File No. _____

Serial # of Originating Document _____

OO and File No. WF 46A-11420

Date Received 11/28/86

From FBI
(Name of Contributor)

(Address of Contributor)

By

To Be Retained ☐ Yes ☒ No Receipt Given ☐ Yes ☒ No

Grand Jury Material - Disseminate Only Pursuant to Rule 6(e), Federal Rules of Criminal Procedure ☐ Yes ☒ No

Title: Electronic Data Systems

Reference: _____
(Communication Enclosing Material)

Description: ☐ Original notes re interview of

FACT Form

b6
b7c

Field File No. _____
Serial # of Originating Document _____
OO and File No. WFO 46A-11420 #2
Date Received 11/28/86
From FBI
(Name of Contributor)

(Address of Contributor)

By _____

ity and State)

of Special Agent)

To Be Returned ☐ Yes ☒ No Receipt Given ☐ Yes ☒ No

Grand Jury Material - Disseminate Only Pursuant to Rule 6(e), Federal Rules
of Criminal Procedure ☐ Yes ☒ No

Title: EDS

Reference: _____
(Communication Enclosing Material)

Description: ☒ Original notes re ~~interview of~~
investigation

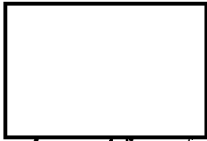
b6
b7C

11/25/84



±G

b6
b7C



GPO Personnel for Army:

1. Contract awarded to EDS - Withhold
2. Terminated for fraud & graft -
EDC in rebuttal claim (\$26,000,000)

many Terminated for cause - EDS got nothing

Changes to Contract:

Summary Sheet 62-64 million -
when line item added = 89 million
EDS admitted & error.

No documentation by GPO personnel -

EDS claimed error in line items



No action until payers get into act.
may

will assign to SA

@ ACE meeting - mentioned to

(GAO hearing held)

b6
b7C

46A-11420 - 1ABaz #2

Field File No. 46A-11420#3

Serial # of Originating Document _____

OO and File No. _____

Date Received 3-5-87

From _____

(Name of Contributor)

By _____

(State)

(Name of Special Agent)

To Be Returned ☐ Yes ☒ No Receipt Given ☐ Yes ☒ No

Grand Jury Material - Disseminate Only Pursuant to Rule 6(e), Federal Rules of Criminal Procedure ☐ Yes ☒ No

Title:

*Unsubs
ED Corp
FAG-600
os:wfd*

Reference: _____

(Communication Enclosing Material)

Description: ☒ Original notes re interview of

b6
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b6
b7C

U.S. Army CID
AIGI, GPO

3/5/87

b6
b7C

(Divorced)

Supervising Printing Specialist
Section Chief Term Contracts Division

- mgr of write spec for K; award K's, +
admin K's. Responsible for overseeing other
people - 5 people

when 600s initiated, was a printing specialist.
Did not have to award author. during 600s. Remained K
specialist during 600s. Role: to assist in K negot, assist
K offer, perform most of the administrative respons.
↓ Any decisions to be made had to be referred to King officer.

Best + Final Offer events
12/16/85 - BFO rec'd

approx 12/23 - mistake by EDS discovered

□ discovered discrepancy. Notified King officer □

Determined that EDS did not make mathematical error -
asked R.C. what can + should be done about it. There
were same 2 line items made mistakes on previously.
EDS was allowed to submit summary or line items.
Other bidders were not. □ no idea why EDS submitted
summary. But not unusual for this to occur.

Army's Role: was to review B&F Technical offer - Col. □
was only one @ Army who had info. □ was not given

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info before 12/23.

eval. price: \$64m, Eval. summary price.

(2.)
Total

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Did not provide pricing info to anyone @ Army except Col. [redacted] until after K awarded.

Col. [redacted] was concerned esp. on on-sight printing costs. [redacted] and some figures for Col. Milwee on the on-sight printing costs

No one on staff provided any info to Maj. Baber - to [redacted] knowledge
not told about intgr. until much later

Present @ source selection committee. [redacted]
was reluctant to sign document.

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Role of Consultants in drawing up benchmark scores
[redacted] had ~~not~~ no contact w/ consultants on benchmark scores

Aware of any misconduct on part of any Army personnel re: 600s?

Army attended parties given during benchmark.

Went to all the benchmark tests. Attended party given by Xerox in Carlisle, Pa.

At time of benchmark test, administered fairly. Subsequent info learned, feels that may not have been fair.

Did not have impression that EDS had previously been selected - prior to benchmarks.

Army's role: tell GPO what their reqmts for 600s were.
began working on specs in 6/84. finished specs in 9/84.
No info of one offeror was shared w/ other offerors.

(3.)

Have no direct or indirect knowledge of anyone @ GPO receiving any benefit from the award of R to EDS. None offered b6
and none rec'd by b7C

Feels did & either illegal, unethical, or improper during the King procedure w/ EDS.

440-11420-1A '3

Field File No. 46A-11420 #4

Serial # of Originating Document _____

OO and File No. _____

Date Received 5-26-87

From

(Name of Contributor)

ARMY-CID

(Address of Contributor)

FT. MEADE, MD

(City and State)

By

(Name of Special Agent)

To Be Returned ☐ Yes ☒ No Receipt Given ☐ Yes ☒ No

Grand Jury Material - Disseminate Only Pursuant to Rule 6(e), Federal Rules of Criminal Procedure ☐ Yes ☒ No

Title: Unsubs
EDS
FAG-6 PD
BT: WFO

Reference: _____
(Communication Enclosing Material)

Description: ☒ Original notes re interview of

Copy of

conducted by -CID

b6
b7C

b6
b7C

ROUTING AND TRANSMITTAL SLIP

Date

12 May 87

TO: (Name, office symbol, room number,
building, Agency/Post)

Initials

Date

1. SA

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b7C

2.

3.

4.

5.

Action	File	Note and Return
Approval	For Clearance	Per Conversation
As Requested	For Correction	Prepare Reply
Circulate	For Your Information	See Me
Comment	Investigate	Signature
Coordination	Justify	

REMARKS

Here is a copy of the results of CID's interview with OGC, GPO. Please be reminded that these notes represent an agents work product vs. a final report product. Hope this resolves any remaining unanswered questions.

b6
b7C

Best regards:

DO NOT use this form as a **RECORD** of approvals, concurrences, disposals, clearances, and similar actions

FROM: (Name, org. symbol, Agency/Post)

Room No.—Bldg.

Phone No.

[redacted]

About 1025, 14 Apr 87, SA [redacted] SA [redacted] and SA [redacted] conducted an interview of [redacted] Government Printing Office, (b)(7)(D) Washington DC. Also present during the interview was Mr. [redacted]

[redacted] related that he is a retired Army LTC. He elaborated that while on active duty he had been a pilot and contracting officer until 1967 when he transferred over to the Judge Advocate General's Corps, and was assigned to the Procurement Law Division at the Pentagon. [redacted] stated that he retired from the Army in 1971, at which time he went to work for the state of Hawaii, until 1972, when he returned to the Washington DC area where he worked for private industry for about 6 months. He continued, (b)(7)(D) that he then worked for the Office of the General Counsel, Department of the Navy as an advisor in contract law. [redacted] added that he remained with the Navy OGC until 1976, when he went to work for the GPO OGC, where was also involved in procurement law.

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In regards to the EDS "clerical mistake", [redacted] Related that on either 22 or 23 Dec 1985, (he could not recall the specific date) [redacted] called him at his office and requested that he come over to her office to discuss a problem with a contract proposal. He continued that when he arrived at [redacted] Office, [redacted] and [redacted] were also present. [redacted] continued that to the best of his memory, the way the problem was explained to him was that one of the 600-S vendors in their BAFO proposal had made an apparent mistake. He added that it was apparent that [redacted] had already discussed the problem and made a determination that the problem was a clerical mistake. [redacted] noted that as he recalled, the error involved one of the amendments which changed a multiplier from monthly vs annual charges. [redacted] stated that after reviewing the PPR and FAR on the subject, he made a determination that the error could be handled as a matter of clarification. He added that the key question that needed to be addressed was whether they were getting into clarification or discussion regarding the error. [redacted] noted that to the best of knowledge the problem involved an error in section IV, line item 4A and 4B of the vendors proposal. He stated that at no time did anyone disclose the identity of the vendor involved, any of the other vendors or what the other vendors had proposed for the same section and line item.

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[redacted] stated that after concluding to handle the problem as a clerical error he (to the best of his knowledge) recalls suggesting that [redacted] contact the vendor involved and have the vendor confirm the error and correction in

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writing. [] related that in his opinion "the resolution of the problem could have gone either way. That if it were ^{up to} me, I would have reopened negotiations with all of the offerers. I would rather error on the side of caution." [] restated his position again, noting that as long as the problem only involved the two line items it was permissible to allow for correction on the part of the vendor. He reflected that he was not consulted by [] regarding any other line items, and that no Army personnel were involved with or present during the discussion concerning the clerical mistake, nor did he recall any references being made to [] during the discussions.

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[] stated that although in hind sight, he should have documented the discussion about the clerical mistake, he did not, and again stated that at no time during the discussion of the clerical mistake was any mention made that the vendor involved was EDS.

[] was asked if during the discussion of the clerical mistake any mention was made of what the vendor had proposed during other negotiations for section IV items 4A and 4B.

b6
b7c

[] stated that had previous discussions about what had been offered during other negotiations been mentioned, and had the other offer been inconstant with what was in the mistake, then he would have felt that the problem was more clearly a clerical mistake.

[] stated that he was involved with the 600-S project from early 1985 as a legal advisor. He stated that in his opinion due to the ADPE involved in the procurement, along with the fact that the printing was separate from the the data base, that the GPO had no authority under title 44 to enter into the type of contract proposal created for 600-S. His feeling were that the Army should have gone through their own channels for the ADPE procurement instead of using GPO. He stated that although he does not recall specifically how he came to the conclusion, it was his impression that the Army was circumventing the proper way to secure ADPE by bringing in a publishing system. He stated the he did not have any discussion with [] concerning that topic. He noted that his opinion on the subject was not shared by his immediate supervisor []

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[] who took the problem to the [] who approved the project. [] noted that once he was overruled he backed out of the matter. [] noted that at that time [] was the acting GENERAL Counsel for GPO. He added that the discussions were verbal in nature and he did not believe that any documentation ^{concerning} the issue was created.

beame aware
[redacted] stated that the first time he ~~learned~~ that the clerical mistake involved EDS was when the Contract Review Board met to review the selection committees choice. During that meeting a memo detailing the clerical mistake was presented to the board. He noted that the board did not discuss the mistake, since it was not anything out of the ordinary. [redacted] noted that these types of errors occur all the time at GPO. He added that he has seen more clerical mistakes by vendors bidding on a GPO contract than anywhere else.

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b7C

In regards to the 600-S procurement [redacted] made the following comments; That the GPO and himself in particular did not ^{conduct} any coordination with anyone in the Army's STA office in regards to the procurement; That he told [redacted]

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[redacted] that if anyone in authority in the Army had looked at 600-S they would have gone through the roof; That he had in the past handled similar situations in the same manner; GPO discovers more clerical mistakes on the part of vendors than anyone else; The only time he was consulted in regards to the 600-S contract was in regards to the clerical mistake.

[redacted] was asked if he had any involvement with either the 24-S or 400-S contracts. He stated that he did not have any involvement with those contracts when they were initially awarded. However, [redacted] added that he was presently involved in a protest over the 24-S contract which was initiated by InfoConversion. He explained that the contracting officer, [redacted] had determined that the solicitation was overly restrictive and withdrew it. The restriction involved the requirement that the vendor have a particular piece of equipment to create micro-fiche, and that the only portion of the contract that could be sub-contracted involved duplication of the micro-fiche and packing. [redacted] continued that in addition to InfoConversion there were only two other companies that could have bid on the contract, and one of them did not choose to make an offer. He noted that the reason for the InfoConversion protest was that they had the low bid, after which [redacted] withdrew the requirement. [redacted] concluded the the restrictive clause in the 24-S RFP originated with the Army's Publication Directorate.

b6
b7C

46-11470-1A (4)

Field File No. 46A-11420 #5

Serial # of Originating Document _____

OO and File No. _____

Date Received 5-27-87

From _____

(Name of Contributor)

U.S. Government Printing Office

(Address of Contributor)

WDC

By _____

(Name of Special Agent)

To Be Returned ☐ Yes ☒ No Receipt Given ☐ Yes ☒ No

Grand Jury Material - Disseminate Only Pursuant to Rule 6(e), Federal Rules of Criminal Procedure ☐ Yes ☒ No

Title: unsubs;
aka EDS
FAG-6PO
OO: WFO

Reference: _____
(Communication Enclosing Material)

Description: ☒ Original notes re interview of

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b7C

b6
b7C

5/26/87

CPO

CPO

12/23/85 rec'd call from [redacted]
asked to come to [redacted] b6 b7C

she, Dick her, + [redacted] in Rb's office
Gave explanation that they discovered a "clinical error".
Did not give name of vendor. Later found out
it was EDS.

Because of amend. to RFL, confusion existed on 2 line
items. Whether annual or monthly basis.
Confusion whether decimal error or unit designa-
tion error. All 3 thought it was a clinical
error on its face.

Explanations made sense ^{at} time.

Conclusion was that it could be handled as clarification
when ⁱⁿ ofc. After broke up mtg, ~~representation~~ specifically told
that to be on safe side, should reopen negot. b6 b7C

No written opinion rendered at that time. No notes
kept from that mtg.

Only minor involvement in 600S contract prior to this
point. Had reviewed proposal. "Tangentially involved
from the beginning."

Thought C&B should not have been involved in
CCBS procurement. Thought Army should have handled.

- Lack of statutory authority
- Lack of properly-trained people to get involved in that kind of procurement.

At the time, knowing what knew then, seemed to be
handled properly.

C&B impression that [redacted] had already decided
that there was a clerical error. b6
b7C

Fact that E&S had made a similar mistake in an
earlier procedure was not given to [redacted] b6
b7C
Does not recall seeing summary sheet.

Remember that surprised that E&S' position changed
as a result of the correction.

46-11420-1A-5

Field File No. 46A-11420-1A-6

Serial # of Originating Document _____

OO and File No. _____

Date Received 6-11-87

From _____

By _____

(Name of Special Agent)

To Be Returned ☐ Yes ☒ No Receipt Given ☐ Yes ☒ No

Grand Jury Material - Disseminate Only Pursuant to Rule 6(e), Federal Rules of Criminal Procedure ☒ Yes ☐ No

Title: unsubs;
dba EDS
PAG-CPD
oo: WFO

Reference: _____
(Communication Enclosing Material)

Description: ☒ Original notes re interview of

b6
b7C

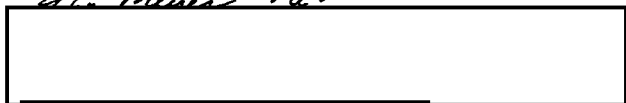
b6
b7C



Army CID

6/11/87

St. Marys Va.



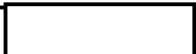
1st Lt. Col., U.S. Army

5'8"; 146 lbs

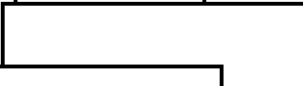
R:W; S:M;



DOB



POB



Orders expire 6/22/87

US Army, Captain [redacted] for [redacted], Ft. Gordon, Ga.



b6
b7C

[COI; accepting Illegal Gratuities; Obstruction of Agency Proceedings]

1973-1981
Went to Army, worked for a real estate lobbying organization (National Realty Committee) [Alton [redacted] was supervisor] [redacted] = Colleague]
↳ had no contact w/ anyone for EDS; GPO



(Col.) was Dir. of Army Publications when M. T. was recalled to active duty to work ^{on} 600 S.

b6
b7C

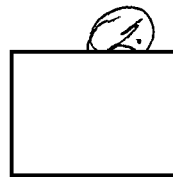
Considered self to be "more than enlightened consumer of printing services." [Considered self to be expert printing service employer.]

"No Hq. office in Dept Army pressured [redacted] to select any vendor" in 600 S procurement.

b6
b7C

- GPO document that required agency in 600 S procurement.
↳ cf. GPO IG

Otherwise, cause of agency existed because of expense, outdating of



b6
b7C

6/11/87

army's ability to update its training manuals, etc.

[redacted] was attached to work on GOOS to facilitate procurement.
1st contact w/ Baker was GOOS. None before (either big or social)

EDS

1st Mtg w/ [redacted] on 3/1/85. EDS did not initiate the mtg. [redacted] was directed to go there by a Gen [redacted] to expand knowledge of integrate publications

b6
b7C

Met [redacted] 5/16/85.

Mtgs w/ EDS & other vendors were more so less for "big diplomacy" reasons. Had much latitude in the GOOS procurement. Felt that potential vendors had the right to see what they were dealing.

Had no daily briefings from staff on progress of procurement. Had not formed any opinion, either favorable or adverse, during procurement.

Had no proclivity toward EDS for any reason; in fact had aversion toward EDS primarily because of their data processing and was concerned that EDS could effectively handle GOOS K.

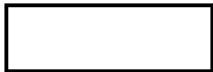
- Do not recall any instance when any vendor asked for any info regarding another vendor. Did not offer any info.

"I have received no gratuities."

"Absolutely no discussion of employment of any vendors."

"No discussions of employment by members of staff."

Benchmark



ultimate decision^{b6}
^{b7C}

To grant time

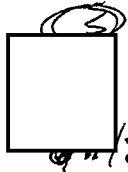
EDS had equip in DE
instead of flying it to TP
could we run it in DE.

[EDS]

Damned if you do, damned
if you don't.

cost vs. expedient
DC fold  for
notification purposes.

b6
b7C



b6
b7C

Benchmark

- Do not recall having had info regarding vendor testing prior to testing.
- Do not recall being contacted by EDS re: benchmark.
- GPO contacted Col. [redacted] regarding decision to allow EDS to test equip. in TP + DE where lg. pc. of equip. located.
- Not aware of any other vendor requesting test, time or whether it was granted or not.

b6
b7C

~~Col. [redacted]~~ Role: Observe and provide answers if questions.

No formal ^{what} discussions and/or negotiations. Do not recall if any specific items were discussed.

Attended TP benchmark. Do not recall what hotel stayed at.

Efficiency-type accommodations. Original accommodations were near construction site, bus station, so changed.

Aware that EDS was staying at the same [redacted] place.

b6
b7C

- Do not recall discussing prices of [redacted]
- During benchmark, referenced to other vendors prices never mentioned.

BATO

Was provided of "bottom line figures" (by GPO) of vendors -
Do not recall receiving copy of BATO

Learned from [redacted] about BATO ^{computation} ~~information~~. Rec'd a call from [redacted] Recalls that it was computation, but can't recall whether was annualized ^{or} ~~per~~ ~~month~~ monthly.

b6
b7C

Does not recall whether Dr. [redacted] to come to GPO & discuss.

Discussed error w/ [redacted] of EDS. No specifics discussed.

(a)

[redacted] never said EDS would go from 3d to 1st pl. if correct. 6/11/87
"never discussed other man's piece of anyone."
- mtg @ QD on 12/27/85 → do not rec. acc. subj. m. tr.; probably
w/ & L. or [redacted] have no recollection.

b6
b7C

Source selection

did not pressure Hope Robinson to sign source selection document. [redacted] did not like EDS (as awardee), but could not articulate why.

b6
b7C

"EDS was selected because they were the best."
Never discussed w/ EDS of the "possibility" of EDS awarding K.

1/9/86 ⇒ met w/ [redacted] Xerox
[on 1/8/86; informed Gen [redacted] of EDS being awarded K, and the
probs experienced.] [redacted] called and said he "heard" EDS
got award. Milwee was shocked to learn [redacted] had info. called
QPD [redacted] who told Milwee that GPO had notified vendors.
Met w/ [redacted] told him that there was no inherent bias against
Xerox and that the best bidder was selected.

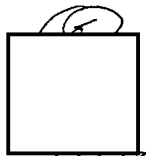
b6
b7C

[redacted] is changing of benchmark score

- after the fact; during the protest period
- did not realize EDS went from 3^d to 1st pl.
- accepts [redacted] changing as appropriate; reasons sounded reasonable.
- changed (according to Baber) because they were miscored
- ~~But~~ Since [redacted] prepared the procedures, he would be the one to know how to score.

b6
b7C

letter sent out by GPO that 600 L.F. was not going to be tested @ benchmark.



9/11/87

b6

b7C

Have no reason to believe [redacted] was offered job by EDS, affiliates.
[redacted] was not offered any job.

STATEMENT OF
RALPH E. KENNICKELL, JR.
PUBLIC PRINTER OF THE UNITED STATES
September 25, 1986

Good morning, Mr. Chairman and members of the subcommittee. The subcommittee has invited me to appear this morning to discuss the results of the General Accounting Office investigation into allegations surrounding the 600-S contract awarded by the Government Printing Office earlier this year.

As the subcommittee has declined to permit GAO to extend the courtesy of providing us with a briefing as to its findings prior to this morning, my testimony here does not address those findings directly. Instead, it is based upon our own internal review of the procurement, including the findings and reviews conducted by my own Inspector General and the agency's general counsel. Following my prepared testimony, however, I will respond to any questions you may have with respect to the GAO investigation, as fully as I am able.

I would like to note for the subcommittee that GPO's staff has cooperated fully with the GAO investigation team. All personnel were made available; all records were made